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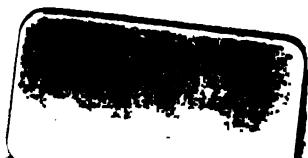
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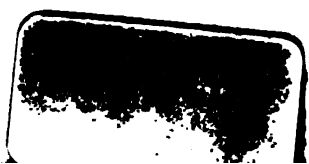
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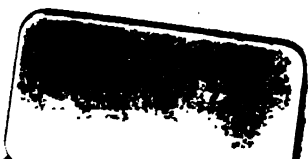
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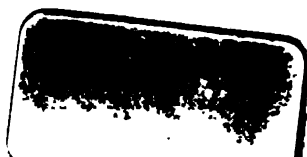
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THE
REPORTS OF COMMITTEES
OF THE
SENATE OF THE UNITED STATES,
DURING THE
FIRST SESSION OF THE THIRTY-SECOND CONGRESS,

BEGUN AND HELD
AT THE CITY OF WASHINGTON,

DECEMBER 1, 1851.

IN TWO VOLUMES.

VOLUME I .
NUMBER 1 TO 209 INCLUSIVE.

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TO

REPORTS OF COMMITTEES

OF

THE SENATE OF THE UNITED STATES,

FIRST SESSION, THIRTY-SECOND CONGRESS.

1851-'52.



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VOLUME 2-----Nos. 210 to 357 inclusive.

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IN THE SENATE OF THE UNITED STATES.

DECEMBER 12, 1851.

Submitted, and ordered to be printed.

Mr. FELCH made the following

REPORT:

[To accompany bill S. No. 50.]

The Committee on Public Lands, to whom was referred the petition of Sidney S. Alcott, of Calhoun county, in the State of Michigan, respectfully report :

That a bill for the relief of the petitioner was reported at the last Congress, accompanied by a report: the committee concurring in the views therein expressed hereto append the same, and report a similar bill.

That they have had the same under consideration, and find that in the month of December, 1836, the petitioner employed one Andrew Parsons as his agent to enter certain lands at the office of the Ionia land district, in that State, and gave him written instructions to enter in his name east half of section thirty-four, township two north, of range five west, and put into his hands the sum of four hundred dollars to pay for the same; that said Parsons did proceed to said office, and applied for said lands in the name of the petitioner, paid over to the receiver of said office said sum of money, and took from him a duplicate, signed by the receiver, in which the land entered is specified to be the east half of section thirty-four above named, but the amount alleged to be paid is only two hundred dollars, and the quantity of acres one hundred and sixty. Therefore, there is an incongruity in the duplicate; but, on a careful examination of all the facts of the case, the committee are satisfied that the petitioner did, in fact, apply and pay for the entire half section, and there are several circumstances developed in the proof which would seem to indicate that a fraud on him was intended by some one connected with the land office. But whether the error which has intervened in the case was the result of fraud or mistake, is wholly immaterial: that Mr. Alcott did not get the land paid for was the fault of the United States officer, and therefore he is entitled to relief. The committee recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 16, 1851.

Submitted and ordered to be printed.

Mr. FELCH made the following

REPORT:

[To accompany bill S. 58.]

The Committee on Public Lands, to whom was referred the petition of Victor Morass, praying a grant of land in lieu of certain lands confirmed to him by Congress, but sold to other persons by the United States, respectfully report:

That the committee have examined the papers and proofs in the case, and concur in the following report made to the Senate in 1850, and herewith report a bill for the relief of the petitioner.

"The petitioner presented his claim to a grant of land by virtue of possession and occupancy of his father, then deceased, to the board of commissioners appointed under the act of Congress entitled "An act to renew the powers of the commissioners for ascertaining and deciding on claims to land in the district of Detroit, and for settling the claims to land at Green Bay and Prairie du Chien, in the Territory of Michigan," approved May 11, 1820. The land claimed by him was described as "a tract of land situated on the south border of the river Delude, containing six hundred and forty acres, to be laid out in a square form, bounded in front by said river, and on the lower side by the Chippewa reservations." The commissioners entered the application and proceeded to take proofs on the subject of the petitioner's right to the land. The public surveys along the river had already been made, and the commissioners having ascertained that a portion of the land in question (to wit, 107, $\frac{84}{100}$ acres) had been sold by the government to individuals before the time of their decision on the subject, recommended the residue of the six hundred and forty acres, being 532, $\frac{14}{100}$ acres, for "confirmation to Victor Morass." The report of the commissioners, with the testimony and proceedings before them in this case, is found in American State Papers, "Public Lands," volume 4, page 798, being No. 1 in book No. 5.

The report of the commissioners was presented to Congress, and by an act entitled "An act to confirm certain claims to lands in the Territory of Michigan," approved April 17, 1828, all the claims purporting to be confirmed or recommended for confirmation in the said volume 5, are confirmed. The fifth section of this act, however, provides that such confirmation "shall not be so construed as to prejudice the rights of third persons, or to impose any obligation on the part of the United States to make payment or give other lands to any claimant who may be deprived of his posses-

sions by operation of law ;" nor shall it operate as any thing more than a relinquishment of the right of the United States in the lands.

Between the filing of their report by the board of commissioners, which was in 1824, and the passage of the confirmatory act in April, 1828, more than four years elapsed ; and as the lands on the river Delude, including the premises covered by the petitioner's claim, was in market as public lands, the same was subject to entry by any individual. It appears from the returns at the General Land Office, as near as can be ascertained without a resurvey for that purpose, that after deducting the quantity sold previous to the confirmation, there remained unsold two hundred and eighty-three acres, to which the petitioner obtained a title under the confirmatory act.

It is also evident from the returns at the General Land Office that this last-mentioned quantity of land has been permitted, since the passage of said confirmatory act, to be entered by individuals, and is now held by the purchasers under patents from the United States. If, as the committee believe, the petitioner under the act of confirmation acquired a perfect title to the portion of the premises not sold by the government at the time of the passage of that act, the rights of the patentees must yield to the petitioner's title. In that event, the United States must refund the amount paid by such purchasers.

The petitioner—whether cognizant of the whole facts and of his rights, or not, does not fully appear by the papers presented—asks other lands in lieu of the quantity originally granted to him ; and under the state of facts as they appear in the case, it is manifestly the interest of the government to grant it. It cannot, however, be done with safety to the rights of the present holders of the lands embraced in his grant, or to the United States, unless he will, as a condition, voluntarily release all claims to the original location. In that event the present occupants will be quieted in their possessions and their improvements, the United States indemnified against a claim for refunding the purchase money, and justice be meted out to the petitioner.

Under the terms of the act of confirmation, it is evident that his rights attached only to that portion of the premises which were sold by the government after the passage of that act, amounting (as near as may be) to two hundred and eighty acres. For a grant of this quantity of land, to be located in Michigan, the committee herewith report a bill, with the proviso, however, that he shall first relinquish all interest in the land originally confirmed to him.

The petitioner also urges a similar right to another parcel of land, a claim for which was presented before the same board of commissioners. The action of the commissioners on the subject will be found in the same volume of the American State Papers, and on the same page with the report in the case above mentioned. The commissioners do not, however, recommend a confirmation of the land claimed to the petitioner, but, alleging that it had already been sold by the government, "recommend the confirmation by Congress of other lands to Victor Morass, adjacent and unsold, in lieu of the land claimed." It has not been the practice at the Department to recognise such recommendation of commissioners to grant other lands to a claimant as the foundation of any right in him, under the law ; neither, in the opinion of the committee, are the terms of the act referred to such as require, upon equitable principles, a new concession of lands. Both of the

claims above mentioned are founded on the possession and improvement of Antoine Morass, father of the petitioner, and it has not been customary for government to recognise two *possessory* rights under one and the same individual. The committee are therefore of opinion that this portion of the petitioner's claim should not be allowed."

IN THE SENATE OF THE UNITED STATES.

DECEMBER 16, 1851.

Submitted, and ordered to be printed.

Mr. FELCH made the following

REPORT:

[To accompany bill S. No. 43.]

The Committee on Public Lands, to whom was referred "a bill for the relief of Charles Melrose," report as follows:

The subject of this bill was investigated by the Committee on Public Lands at the last session of Congress, and a bill reported for the relief of the applicant. The report of that committee, hereto appended, explains the merits of the case, and the committee recommend the passage of the bill referred to them.

The Committee on Public Lands, to whom was referred certain documents relative to the claim of Charles Melrose, for the correction of an error in the location of two bounty-land warrants, with instructions, by resolution of the Senate, to inquire into the expediency of granting relief, report as follows:

The papers presented in the case establish the fact that the applicant, being possessed of two bounty-land warrants, went with two friends on to government lands in Buchanan county, Iowa, to select a location under them. Upon a personal examination of the premises, he selected for entry the north-west quarter of section ten, and the south-west quarter of section three, in township eighty-nine north, of range ten west; that the description of the premises selected by him was then written on a piece of paper by one of his associates and handed to the applicant; that the latter took it to the land office at Dubuque; that he applied to the register to enter the land in question, and read to him twice the description of the land desired by him from the memorandum above-mentioned; that he received his duplicate certificate, and after being told that it was correct, put it into his pocket without reading.

The applicant subsequently moved into the county and settled on the land so selected, and has made improvements thereon. He afterwards ascertained that the land on which he lived was not marked as sold at the land office, and, on examining his duplicate certificate, found that the land entered by him was described therein as the north-west quarter of section ten, and the south-west quarter of section three, in township eighty-eight north, of range ten west, instead of that first above described. The error

in the description is in the number of the township only—the certificate designating township eighty-eight, while the land selected by the applicant is in township eighty-nine. The location, according to the description in the certificate, is six miles south of the claimant's residence, and on land much less desirable.

The committee are fully satisfied that the difficulty had its origin in mistake merely, without design or fault on the part of the applicant, and that he ought, in justice, to be permitted to change his entry at the land office so as to embrace the premises first selected, and now improved and occupied by him. They therefore report a bill to that effect.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 17, 1851.

Submitted, and ordered to be printed.

MR. HAMLIN made the following

REPORT :

[To accompany bill S. No. 66.]

The Committee on Commerce, to whom was referred a bill for the relief of William P. Greene have had the same under consideration, and report :

That the facts contained in the memorial of said Greene are truly and correctly set forth. He faithfully discharged the duties of surveyor of the port of Providence, and measurer of salt, at the same time. The two offices are by law not compatible with each other, and the department are not authorized to allow said Greene his fees as measurer. But said Greene having been duly appointed as surveyor, and the Secretary of the Treasury having subsequently confirmed his appointment as measurer, without fault on the part of said Greene, and without knowledge on the part of said Greene that the offices were not compatible with each other, and having discharged the duties of measurer in good faith, your committee are of opinion that the petitioner is entitled to relief, and therefore recommend the passage of the bill.

Hamilton, pres.

IN SENATE OF THE UNITED STATES.

DECEMBER 17, 1851.

Submitted, and ordered to be printed.

Mr. HAMLIN made the following

REPORT:

[To accompany bill S. No. 67.]

The Committee on Commerce, to whom was referred the petition of John A. McGaw, of New York, for relief, report:

It appears from the memorial of the petitioner, and the evidence in the case, that he chartered the ship *Charlotte*, at Boston, on the 13th day of October, A. D. 1847, to the United States, to take a cargo of pressed hay from Boston to Vera Cruz, Mexico. The charter-party was in the form used by the merchants in Boston and New York, and specified the sum which said McGaw should have for the voyage—that there should be eight lay-days, in which the vessel should be discharged after her arrival at Vera Cruz, and that for every day which the vessel should be detained after the said eight days, the said McGaw should receive at the rate of one hundred dollars per day for demurrage, provided such detention shall happen by the default of the United States or their agent.

The vessel arrived safely with her cargo at Vera Cruz, on the 17th day of November, and was not unloaded until the 8th day of December. She was detained fourteen days beyond the time specified in the charter-party, within which it was stipulated she should be unloaded, and after which demurrage was to be paid at the rate of one hundred dollars per day. For that sum, \$1,400, the petitioner asks an appropriation.

There is some evidence in the case tending to show that, from the bad state of the weather, or northers, so called, the vessel could not be unloaded within the number of lay-days specified in the charter-party; and other evidence on the part of the petitioner, tending to prove that the vessel could have been unloaded within that time, had sufficient facilities been furnished by the United States. There is some conflict of evidence on this point, but the weight of the evidence tends to show that the vessel might have been unloaded within the lay-days named. But, as your committee believe the petitioner entitled to relief on other grounds, it does not become necessary to determine it on this point.

It appears from the affidavits and certificates of a large number of the most respectable and intelligent merchants of Boston and New York, that where a certain number of lay-days is named in a charter-party for unloading a vessel, the charterer is entitled to demurrage for detention after that time, when such detention is in consequence of bad weather. The lay-days in a charter-party usually, as they did in this case, exceed the number

necessary to unload. Where it is understood that the lay-days are designed to be good weather, there is usually a provision that the days named should be specified as "working days." In the merchant service, then, the petitioner would be entitled to demurrage, if the delay was occasioned by bad weather. And as the same rule should apply here which would between merchants, your committee believe the petitioner entitled to relief; and report a bill, herewith submitted.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 18, 1851.

Submitted and ordered to be printed.

Mr. GWIN made the following

REPORT:

[To accompany bill S. No. 70.]

The Committee on Naval Affairs, to whom was referred the memorial of Eliza C. Bache, widow of Lieutenant George M. Bache, of the navy, report:

That the calamity by which his family was bereaved of their husband and father, and his country was deprived of the services of an intelligent, gallant and meritorious officer, is well known from the public notoriety which the event acquired by the affecting statements published on the subject shortly after its occurrence, in which the sympathies of the whole community were called into action. It appears that this young officer perished while nobly performing his duty in saving the vessel under his command, (the U. S. brig Washington,) and the lives of her crew—that his last act was that of giving the order which ensured the safety of this vessel and incidentally caused his own death, of which fact, it appears the records of the Navy Department afford proof. He breasted the storm and exposed himself to its fury, and in the execution of his last perilous duty which saved the vessel, himself and several of her crew were swept overboard and perished, together with the poop-cabin of the vessel containing all his effects, including his private funds.

This last act, so noble and daring, and so strikingly illustrative of the professional fidelity by which he was animated, resulted, as it appears, in all human probability, in the saving of the vessel and a number of valuable lives to his country, while the sad fate of himself and those who perished with him, has left their widows and families in mourning and desolation.

Although there may be some slight difference between this case and that of the widows and orphans of those officers and others lost in the brig Somers, the principle is essentially the same, and the committee believing that it is a wise and humane policy, and one promotive of the best interest of our navy, to encourage such patriotic and self-sacrificing fidelity to duty by providing aid and assistance to the destitute widows and orphans of those who, in proving themselves so faithful, lose their lives, they recommend that similar provision be made for the widows and relatives of those officers and seamen of the navy attached to the United States brig Washington, who were lost overboard on the 7th September, 1846, as was made for the widows and orphans of the officers, seamen and mariners of the brig Somers, by the act of Congress approved the 14th of August, 1848, and accordingly report a bill for their relief.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 22, 1851.
Ordered to be printed.

Mr. JONES submitted the following

REPORT:

[To accompany bill S. 382.]

The Committee on Pensions, to whom was referred the petition of Elizabeth Arnold, beg leave to report:

That the petitioner is the only child of the late Jonathan Pitcher, of Pawtuxet, in the State of Rhode Island, who was appointed by the Congress of the Revolution a lieutenant in the navy, on the 22d day of December, 1775, and who rendered highly important services to the country during the revolutionary war. The petitioner is now eighty-three years old, and in view of the facts before the committee, they have deemed it proper to report a bill for her relief.

Hamilton, Print.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 23, 1851.

Submitted, and ordered to be printed.

MR. DAWSON made the following

REPORT:

[To accompany bill S. No. 83.]

The Committee on Military Affairs, to whom was referred the petition of Mrs. Margaret Hetzel, widow and administratrix of A. R. Hetzel, late assistant quartermaster in the army of the United States, report:

That it appears that her husband died on the 20th day of July, 1847, at Louisville, in the State of Kentucky, in attempting to reach home after a most laborious service in the city of Vera Cruz, during the siege by the troops of the United States, leaving the memorialist, his widow, and three children.

That the deceased had served in the quartermaster's department more than twelve years previous to his death, and had disbursed large sums of money for the Government; that his accounts have all been settled at the treasury.

That in the account rendered by the deceased, for a part of the third quarter of the year 1838, the following item, charged by him to the United States, was disallowed at the treasury, viz:

"Per centage on disbursements, on account of the appropriation for preventing and suppressing Indian hostilities, from the 4th day of July, 1836, to the 30th September, 1838, \$519,549.78, at 2½ per cent. - - - - - \$12,988 74."

It will be noticed that that duty was entirely disconnected with his regular quartermaster's account, which was covered by his official bond; but during this very period his official disbursements on account of the army amounted to several hundred thousand dollars, which was duly closed at the Treasury Department.

Upon the account presented by the deceased, in which the foregoing item is found, is the following memorandum under his own hand, in explanation of the charge.

"The amount charged as per centage is not retained, but the undersigned cannot but consider it as a just and equitable claim against the Government in consequence of the unusual and extraordinary responsibilities he assumed while on duty as principal quartermaster in the Cherokee nation. The funds placed in his hands, amounting to nearly \$700,000, owing to the system of accountability he established, were disbursed in such

a manner that government lost nothing by the defalcation of agents, whom it became necessary to employ from time to time to assist in furnishing supplies, procuring transportation, &c., at the various posts in the Cherokee nation. His duties were arduous in the extreme, as the several commanding officers, under whose orders he was acting, can testify; and as the money expended, on which he claimed a per centum, was out of an appropriation distinct from the regular army appropriation, he considers it, to say the least, equitable, and that it ought to be allowed."

To show the faithfulness and strict honor and honesty which marked the character of this officer, and the rectitude of his transactions, the committee have extracted from the same account the following items:

"Premium on Tennessee funds, three hundred and thirty-seven dollars." This item is explained thus:

"Drafts on the quartermaster-general commanded a premium in Tennessee currency varying from five to ten per centum. The funds thus obtained were paid out, as far as practicable, as they were received—the premium received on the drafts being paid to claimants. In liquidating small accounts the premium was not calculated, which explains the above entry."

By the act of Congress of the 3d of March, 1839, it seems that claims of this character, after the passage of said act, were to be disallowed, and it was, no doubt, intended to cut off all claims not founded in justice; but your committee are of the opinion that that act should not be applied in opposition to a claim in itself reasonable and just, and which is not embraced within its provisions, but was existing and pending for adjustment before the passage of that law; therefore they recommend that the claim of Mrs. Margaret Hetzel, widow and administratrix of A. R. Hetzel, late assistant quartermaster in the army of the United States, be allowed, and that the certificates of Major-General Winfield Scott and Major-General John G. Wool, marked A and B, showing the justice of this claim, be annexed and considered a part of this report, and be printed with it.

A.

This is to certify:

From 1836 until the actual removal of the Cherokees west in 1838, Captain A. R. Hetzel was the principal quartermaster of the army on duty in that Indian country, embracing parts of North Carolina, Georgia, Tennessee and Alabama. To effect the removal of the Indians, a large volunteer force was assembled and made to overspread the whole Cherokee nation, by being divided into many detachments, at separate posts. The agents of the quartermaster's department at these several posts were employed in the disbursement of funds, placed by the Government in the hands of Captain Hetzel. He was obliged to appoint these agents from the want of Government agents, and to instruct them in their duties, as well as become responsible for their acts to an enormous amount, and thus assumed unusual and extraordinary responsibilities.

Having myself been employed as the commander of the troops in the Cherokee country at the time that the removal of the Indians was effected, viz: from early in May to the middle of November, in 1838, I take

pleasure in bearing testimony to the arduous and able services then rendered by Captain Hetzel, and believe that while the extraordinary responsibilities he assumed greatly facilitated the operations of removing the Indians, they could not have been required of him by the Government, and were, therefore, eminently extra official, for which, it seems, his now destitute family may reasonably claim extra compensation.

WINFIELD SCOTT.

HEADQUARTERS OF THE ARMY, NEW YORK,
January 17, 1850.

B.

Captain Hetzel was long known to me as an intelligent, active and efficient officer. He served under my command, in the Cherokee nation, from the 1st of July, 1836, to the 1st of July, 1837. During this period his duties were highly onerous and responsible. He was chief of the quartermaster's department in that country, and I held him responsible for the faithful performance of the duties of all subordinates in the department. As it was the practice, at this time, of the War Department to allow for extra services, I know of no officer who could claim, with greater justice, compensation for onerous and extra services than can Captain Hetzel. He was faithful to the last degree.

In 1846, during the Mexican war, he again became subject to my authority, when he rendered important services in preparing and providing the means of transporting the volunteers to their distant service. After which, he was engaged in procuring supplies and the means of transportation of the troops for Vera Cruz. Being stationed at this place, he contracted a disease which compelled him to leave for his home, but which, as I am informed, before his arrival, carried him to his grave.

I trust his claim will receive all the attention and consideration which is justly due to gallant, efficient, and extraordinary services.

JOHN G. WOOL,
Major General, U. S. A.

Claim of Captain A. R. Hetzel, assistant quartermaster, United States army.

This claim was made in an account rendered by my husband in the third quarter of 1838, in the following item, viz :

"Per centage on disbursements, on account of the appropriation 'for preventing and suppressing Indian hostilities,' from the 4th of July, 1836, to the 30th September, 1838, \$519,549.78, at 2½ per cent. - - - \$12,988 74."

The following explanation of this charge is in my husband's own handwriting :

"The amount charged as per centage is not retained, but the undersigned cannot but consider it as a just and equitable claim against the Gov-

ernment, in consequence of the unusual and extraordinary responsibilities he assumed while on duty as principal quartermaster in the Cherokee nation. The funds placed in his hands, amounting to nearly \$700,000, owing to the system of accountability he established, were disbursed in such a manner that the Government lost nothing by the defalcation of agents, whom it became necessary to employ from time to time, in furnishing supplies, providing transportation, &c., at the various posts in the Cherokee nation. His duties were arduous in the extreme, as the several commanding officers, under whose orders he was acting, can testify ; and as the money expended, upon which he claims a per centum, was out of an appropriation *distinct from the regular army appropriation*, he considers it, to say the least, equitable, and that it ought to be allowed.

“ A. R. HETZEL,

“ *Captain and Assistant Quartermaster.*”

IN THE SENATE OF THE UNITED STATES.

DECEMBER 23, 1851.

Submitted, and ordered to be printed.

Mr. DAWSON made the following

REPORT:

[To accompany bill S. No. 84.]

The Committee on Military Affairs to whom was referred the memorial of Roger Jones, have had the same under consideration:

And have concluded to adopt the report made thereon at the last and preceding sessions of Congress. They also report the bill which has been twice passed by the Senate.

The committee have carefully examined all the evidence in this case, and are of opinion that Adjutant-General Jones is entitled, both in law and equity, to the relief he asks for, his claim being fully sustained by former and repeated decisions of the Senate; and the committee report a bill accordingly, believing it the only mode now practicable by which justice long deferred can be rendered to a meritorious officer, whose life has been devoted to the public service; and in consideration of the undeniable justice of the claim, and the previous decisions in the Senate, upon the fullest examination the committee recommend that the bill receive its third reading and be passed.

MEMORIAL OF ROGER JONES:

To the Senate of the United States:

The memorial of Roger Jones respectfully sheweth: That Colonel Robert Butler and this memorialist were the adjutant-generals of the army at the reduction by law in 1821, which law provided, among other reductions, that there should be only one adjutant-general; that the President considered himself authorized, under this law, to dismiss both Colonel Butler and this memorialist from their commissions as adjutant-generals, and to appoint General Atkinson to be retained adjutant-general under the law; that on Atkinson's declining the appointment, the President appointed Colonel Gadsden; that the Senate considered this whole proceeding of the Executive not warranted by the law, and did refuse to confirm the appointment of Colonel Gadsden; that the President submitted the appointment anew, with an elaborate argument to justify his execution of the law; that
Hamilton, print.

after a careful examination, and an able report from a committee, the Senate did, by an increased majority, reiterate their dissent from the opinion of the Executive, and did again reject the appointment of Colonel Gadsden; that this decision of the Senate was made with no view to party opinions or personal influences, but with the express acknowledgment in the report of their committee of the distinguished merits of Colonel Gadsden, and on the ground that neither the law nor justice admitted of his appointment and the consequent dismissal of both officers who then held the commissions of adjutant-general, and who, the Senate thought, had also rendered some service during the war to support their strict legal claim; that the President, therefore, took no further action in the matter, but during the rest of his administration reported the office vacant, (as see the army registers after that time;) that at the reduction Colonel Butler was appointed to a regiment, which he declined, and left the military service, and accepted a civil appointment under the government, as surveyor-general of Florida; that at the same time this memorialist was sent back to his lineal commission in an inferior grade in the artillery, where he remained in service, endeavoring to procure from the administration the recognition of his rights according to the law and the decision of the Senate, and to be recognised as adjutant-general; in which endeavor he was not successful till the incoming of the next administration, when, by the concurrence and prompt action of the President and the Senate, he was at once (being two days only after the inauguration) placed in the office of adjutant-general, without, as he believes, a dissenting voice in the army; but no date of commission being expressed in his nomination, overlooking therein the rule in all military promotions and appointments,) he took date from the confirmation by the Senate, thereby losing his military rank and pay during the time his commission was suspended, and the office declared vacant by the former President. That this absence of date in his new commission, or even the issuing of a new commission at all, was in part the result of haste and inadvertence, may be inferred from a subsequent proceeding in the Senate, February 6, 1827, when Colonel Bissell being likewise renominated for appointment, the Senate resolved, by a vote of thirty-seven to two, that he was entitled to his back date; and re-asserting, in the report of their Committee on Military Affairs, the principle of their former decision in 1822, to wit: "that the Senate maintained that he had never been out of the army."

It is to procure relief from the injustice and injury which the memorialist suffered in the premises, that he now makes this application; and, on this showing, he respectfully submits that he was the sole person entitled, on the resignation of Colonel Butler, to the office of adjutant-general, as maintained by the Senate, and *finally acquiesced in by the President*; that this decision must now be admitted to be correct; that it ought to cover the whole case and the whole time; and that his claim was valid while it was suspended and in debate.

In regard to army promotions, the rule is invariable; and this memorialist knows no instance, during the long period in which he has held the office of adjutant-general—the office through which all army commissions are issued—where the benefit of the rule (there is now no exception) has been denied to any officer. And this rule is, that in all cases of promotion, however long the commission may be withheld by ignorance of the vacancy, by disputed claims, by failure of the Executive to send in the list, by delay of the Senate to act on it, or by other accident, yet when

the commission is conferred, it relates back to the vacancy, and dates from the time when the promotion was due to the officer. The rank and commission of every officer now in the army, who has received a promotion from his first commission, is now held under this rule.

The case presented in the memorial is stronger than the right to promotion. It is the case of *a commission actually held*, as maintained by the Senate; the exercise of which was temporarily suspended by the Executive, and then restored.

This memorialist, therefore, prays to be allowed the pay belonging to his rank and commission during the time it was unjustly held from him; and with this memorial he submits certain documents, as evidence of the facts herein stated, and a brief argument, if any argument shall appear necessary, to the committee who are to consider and report on the case.

Respectfully submitted,

ROGER JONES,

Adjutant General United States Army.

WASHINGTON, December 27, 1848.

IN THE SENATE OF THE UNITED STATES.

JANUARY 2, 1852.

Submitted, and ordered to be printed.



Mr. RUSK made the following

R E P O R T :

[To accompany bill S. No. 88.]

The Committee on the Post-Office and Post-Roads, to whom was referred the memorial of Rufus Dwinel, praying compensation for services for carrying the mail, have had the same under consideration, and respectfully report :

It appears in evidence, that in the year 1832, James Thomas, of the State of Maine, entered into a contract with the Postmaster-General for carrying a *daily* mail between certain points therein specified, which contract was intended to remain in force for four years from the time of its date. It further appears that subsequently, in consequence of the embarrassed condition of the Post-office Department, the service to be performed was made tri-weekly, and that for several months of the year there was no service whatever, with a view to a reduction of the expense. The contractor had, in the meanwhile, made all of his arrangements with a view to the transportation of the mail daily, and had for that purpose procured the best carriages and horses, in order to give satisfaction to the public. The change ordered by the department not only reduced, in a corresponding degree, the profits of the contract, but it also made it necessary for the contractor either to keep constantly upon the road a full force half employed, or to sell off his stock at a great loss, at a season when this description of property is not in demand. Under these circumstances, the contractor felt bound to hold himself in readiness to carry out his original contract at all times, and presented his accounts to the department in the same form as if the full service had been performed. The charges for service during the periods of suspension were not allowed; owing to which fact, there appeared a balance against the contractor of nine hundred and ninety-one dollars and nineteen cents. Colonel Thomas, the contractor, requested that a suit should be brought, with a view to a thorough investigation and settlement of the matter, and accordingly an action was instituted against him for the balance claimed to be due. The trial took place before the circuit court of the District of Columbia, at the March term, 1841, and a verdict was rendered in favor of the contractor, for thirteen thousand and thirty-seven dollars and seventy-two cents, with interest from the 4th day of March, 1837. To this judgment there was no exception taken on the part of the Government.

The plea offered at the trial, on behalf of the Government, for having disallowed a part of the contractor's account, was, that there had been a change in the service with the assent of the contractor, and that consequently he could not claim under the original contract. In support of this plea, letters from the contractor were produced in evidence, in which, as they insisted on the part of the Government, he acquiesced in the change. In answer to this, it was proved by the evidence of Mr. Brown, an officer of high rank in the Department, that he had been instructed by the Postmaster-General to inform the contractors, and Colonel Thomas among others, that the change was made in consequence of the embarrassed state of the Department; and that so soon as the Department should be in condition to do so, any losses would be made good which he had sustained.

Your committee do not recognize the right of either party to a solemn contract under seal, to modify or cancel the contract, except by mutual consent, in which case they think it can only be done by an instrument of equal solemnity with that in which the original contract was set forth. In the present case, no such formal modification took place; and although it is alleged that the contractor acquiesced in the change made by the department, and went on to perform the contract as modified, it is evident that he could not have done otherwise without entire ruin to himself. In addition to this, the acquiescence took place, as appears, under assurances from an authorized source, that any loss incurred in so doing should be made good so soon as the condition of the department would permit. In other words, the contractor was willing to waive his right to the payment of a part of his remuneration under the contract, until the Government should be relieved from difficulties which were temporary in their character.

Owing to the refusal on the part of the Government to allow for the entire service as stipulated for in the original contract, on the presentation of his accounts by the contractor, there appeared to be a balance against him, of nine hundred and ninety-one dollars and nineteen cents. At his instigation, a suit was brought against him to recover the above amount, in the circuit court of the District of Columbia; and at the trial term in March, 1841, the jury, under the direction of the court, returned a verdict in his favor for thirteen thousand and thirty-seven dollars and seventy-two cents, with interest from the 4th day of March, 1837.

Although, in the opinion of your committee, the verdicts of juries do not furnish, in general, safe standards by which to be governed in estimating the liabilities of the Government, the circumstances of the present case are such as to induce them to believe that no better guide can be found in forming a correct judgment. The jury which rendered the verdict was composed of men whose integrity, intelligence, and respectability are attested in the strongest manner by high authority, whilst the court is universally admitted to have been one of great experience, extensive legal knowledge, and entire impartiality.

For the amount of this verdict, which had been assigned by the original contractor to secure a friend for advances made to him in money to enable him to carry out the contract, a claim is now urged. The present petitioner, also a friend of the original contractor, having also made advances to a large amount for the same object, was, as appears, obliged, in order to save himself, to purchase the assignment, paying therefor the entire sum due to the first assignee. When these advances were made, the contract, as it was originally made, was in all probability looked to as the source of

reimbursement; and your committee are unwilling that the good faith of the Government, which was impliedly, if not directly pledged, should be forfeited. It is clear that not only the advances above referred to, but all of the preparations in the way of horses, carriages, &c., were based upon the assurance that the contract would be carried out in good faith, and your committee do not think it would be just, or even politic, to disappoint the expectation which appeared to be well-founded.

After mature consideration, the committee are of opinion that the prayer of the memorialist is just, and should be granted, and therefore recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 2, 1852.

Submitted, and ordered to be printed.

Mr. UNDERWOOD made the following

REPORT :

[To accompany bill S. 53.]

The Committee on Public Lands, to whom was referred a bill to provide for the unpaid claims of the officers and soldiers of the Virginia State and continental lines of the revolutionary army, report :

That they have so modified the bill referred to them as to provide for the payment of all military lands situated in the State of Kentucky, west of the Tennessee river, covered by Virginia treasury warrant claims.

The bill now reported is based upon the following considerations : In the year 1779, the commonwealth of Virginia, for the purpose of "creating a sinking fund in aid of the annual taxes to discharge the public debt," (see vol. 1, Littell's Laws, page 408,) authorized the sale of her waste and unappropriated lands, at the rate of forty pounds per one hundred acres. Upon the payment of the money into the treasury, the register of the land office was required to issue a land warrant, specifying the number of acres the party was entitled to, and authorizing any surveyor, duly qualified, to lay off and survey the same. The warrants thus issued were denominated "treasury warrants," and by that name became known in subsequent legislation and judicial decisions. By the laws of Virginia, her officers and soldiers engaged in the war of the Revolution were entitled to certain bounties in land, for which land warrants were also issued by the register of the land office; and these, to distinguish them from "treasury warrants," were called "*military warrants*." There were several other classes of claims under the laws of Virginia, for which land warrants were issued, having appropriate names, but which need not be particularly mentioned, as doing so would throw no light on the subject of the present bill.

All persons holding land warrants, no matter on what account issued, and being desirous of locating the same "on any particular waste and unappropriated lands," were required to lodge their warrants with the surveyor of the county in which the lands about to be appropriated, or the greater part, were situated, and "to direct the location thereof so specially and precisely as that others may be enabled, with certainty, to locate other warrants on the adjacent residuum." The location which the party was thus required to give, was to be entered by the surveyor in a book to be kept by him for that purpose. The locations so made and entered upon the surveyor's book obtained the technical name of "*entries*," and gave an

equitable right to the land described from their date. The construction of these entries, the proper mode of surveying them, and whether they were possessed of such specialty and precision as to enable others to locate with certainty the adjacent residuum, became questions of great importance and difficulty in the jurisprudence of Kentucky, and involved the people and courts in litigation which, but for the statutes of limitation, threatened to be interminable. The effect was disastrous in every respect. The same land was covered by the claims of two, three, or more persons; and as there could be but one valid claim, the proprietors of those adjudged to be invalid not only lost the original consideration paid for their warrants, but, in innumerable instances, spent much time and money in unavailing efforts to establish their claims. The bill under consideration proposes to compensate the holders of military warrants, who have sustained loss, or as yet have received nothing in the cases stated and provided for.

The act of Virginia, of 1779, already referred to, declared, that "no entry or location of land shall be admitted within the country and limits of the Cherokee Indians, or on the north-west side of the Ohio river, or on the lands reserved by act of assembly for any particular nation or tribe of Indians, or on the lands granted by law to Richard Henderson & Company, or on that tract of country reserved, by resolution of the general assembly, for the benefit of the troops serving in the present war, and bounded by the Green river and south-east course, from the head thereof to the Cumberland mountains, with the said mountains to the Carolina line, with the Carolina line to the Cherokee or Tennessee river, with the said river to the Ohio river, and with the said Ohio river to the said Green river, until the further order of the general assembly." The lands mentioned in the foregoing extract were excepted, and not liable to be appropriated by treasury warrants. All other portions of the vacant domain of Virginia might be.

In 1781, (page 432,) the legislature of Virginia, reciting that a considerable part of the tract of country allotted for the officers and soldiers hath, upon the extension of the boundary line between this State and North Carolina, fallen into that State, therefore enacted, "that all that tract of land included within the rivers Mississippi, Ohio, and Tennessee, and the Carolina boundary line, shall be, and the same is hereby substituted in lieu of such lands so fallen into the State of North Carolina, to be, in the same manner, subject to be claimed by the said officers and soldiers."

At the October session, 1783, of the Virginia legislature, an act was passed (page 442) appointing and authorizing Major General Peter Muhlenburg, and other officers of the continental line, and Brigadier General George Rogers Clark, and other officers of the State line, in behalf of their respective lines, to make arrangements for surveying the lands appropriated by law as bounties for the officers and soldiers.

The action of the board of officers thus appointed resulted in constituting a part of them as superintendents, and in the election of two principal surveyors, one for each line, and in the division of the country set apart, by law, for the satisfaction of the bounties. By this division, the country included within the following boundary, beginning at the mouth of Green river, thence up the same to the mouth of Big Barren river, thence up the same to within (6) six miles of the Carolina (now Tennessee) State line, thence west to the dividing ridge between the Cumberland and Tennessee rivers, thence with that ridge to the Ohio river, and up the same to the beginning, was allotted to the continental line, and the residue to the State

line. Of course, the country west of the Tennessee river was thus set apart for the satisfaction of the State line military warrants.

By the act of Virginia, passed at the session of the legislature which commenced on the 20th of October, 1783, authorizing the cession of the country north-west of the Ohio river to the United States, and which was executed by deed dated the 1st of March, 1784, as entered into on the part of Virginia, by the commissioners, it was provided, "that in case the quantity of good land on the south-east side of the Ohio, upon the waters of Cumberland river, and between the Green river and Tennessee river, which have been reserved by law for the Virginia troops upon *continental* establishment, should, from the North Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops in good lands, to be laid off between the rivers Scioto and Little Miami, on the north-west side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia." In this provision it may be perceived that the *State line*, or State establishment, was omitted; whether through mistake or design, it cannot be important to inquire. So it is, the troops exclusively in the service of Virginia were excluded from all participation in the lands reserved north-west of the Ohio, to make up for any deficiency in good lands in the country on the south side of Green river.

In 1784, the superintending officers commenced their labors, and many entries for lands were made upon the rivers Mississippi and Ohio, below the mouth of the Tennessee, in satisfaction of State line military warrants. The superintending officers explored the country; but their operations were likely to excite Indian hostilities, and in consequence thereof the Virginia legislature, at their October session, 1784, (page 451 of Littell, 1st vol.,) passed an act authorizing the governor to suspend, with the advice of the council, the surveying and taking possession of those lands. This was accordingly done, and the lands remained unsurveyed and unpatented until after the extinguishment of the Indian title, by the treaty with the Chickasaw Indians, dated 19th October, 1818. (See vol. 7, United States Statutes at Large, page 192.)

Before the country west of the Tennessee river was set apart by the act of 1781, to satisfy military bounties, General George Rogers Clark, and others, had located many treasury warrants thereon. These claims were surveyed and carried into grant. The quantity of land appropriated by those treasury warrants exceeds one hundred thousand acres. One of the members of the committee has procured a map, which exhibits the position of those treasury warrant claims, and the military surveys covered by them, and which is here referred to as part of this report. By an act of the general assembly of Kentucky, passed in 1820, the country west of the Tennessee river was laid off into townships and sections, and the map herewith exhibited has been prepared from the map and information compiled by Mr. Henderson, who was appointed to execute the work, in pursuance of the laws of Kentucky.

It will be seen by inspecting the map, that Robert Porterfield's military claim covers the town of Paducah, and lies within Clark's treasury warrant claim. Paducah was laid out and sold under the title based upon the treasury warrant claim. Porterfield's representatives (the property being of immense value) instituted suit to recover it. The military claimants have, probably, from 1784 down to the final settlement of the controversy in Jar-

uary, 1844, by the Supreme Court, contended that the country west of the Tennessee river was included within the country and limits of the Cherokee Indians; and, consequently, that it was illegal, under the act of 1779, to locate treasury warrants within that boundary. Superintending officers, therefore, under the act of 1781, proceeded to locate their military warrants without respect to the previous treasury warrant claims. This assumption has been settled against them. The result is, that the military claims, embracing in all about 80,000 acres, which were located upon the prior treasury warrant claims, have been lost. The decision of the Supreme Court, which goes elaborately into the consideration of the whole subject, is to be found in Howard's Reports, vol. 2, page 76. The bill proposes to make compensation for these losses.

IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1852.

Submitted, and ordered to be printed.

MR. BRODHEAD made the following

REPORT :

[To accompany bill S. 93.]

The Committee of Claims, to whom was referred the petition of Allen G. Johnson, have had the same under consideration, and report :

That the facts in the case are fully set forth in the report made thereon by the Committee of Claims, at the first session of the thirty-first Congress, (No. 21) which report is adopted by this Committee, with the recommendation that the accompanying bill do pass.

“That the facts in the case, as set forth in the testimony, are as follows: The petitioner, Allen G. Johnson, was an officer in command of a company of mounted Florida militia, stationed at camp Bailey, Jefferson county, Middle Florida, where he and his company were mustered out of the service of the United States on the 6th of January, 1840. It is further in evidence that at the time of said discharge, the said claimant handed over to J. B. Harbour, as the representative of J. B. Collins, quartermaster, certain subsistence stores, for which he took the receipt of the said Harbour on behalf of the said Collins, for whom he was authorized to act. On applying to the Third Auditor of the Treasury for a final settlement of his accounts, the petitioner was not allowed credit for the stores handed over as above stated, on the ground that Quartermaster Collins had not credited the claimant therewith in his returns, the Third Auditor remarking, at the same time, that it was strange that Harbour, himself a quartermaster, should have given a receipt in the name of Collins, when he might have receipted for the stores on his own authority.

The only point in this case which, in the opinion of the committee, is worthy of particular consideration, is the question whether the petitioner, Johnson, turned over the stores of which he had charge, as captain, to a person duly authorized to receive and give a receipt for them. This he appears to have done ; and, so far as he is concerned, any subsequent omission of duty on the part of Collins, who received them through his agent, Harbour, is a matter of trifling moment. Whether Harbour received the stores as the representative of Collins, or in his own capacity of quartermaster, he and Collins are the parties responsible to the Government, and indemnity should be demanded from them or their securities for any laches in the performance of their duty. Your committee can see no propriety in holding officers of

the line, as they are termed, accountable for the non-performance of their duty on the part of those over whom they have no control, and the especial business of whom it is to take charge of, and account for the property of the Government committed to their keeping, under the penalty of their bonds.

Entertaining these opinions, your committee respectfully recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1852.

Submitted, and ordered to be printed.

Mr. BRODHEAD made the following

R E P O R T :

The Committee of Claims, to whom was referred the petition of Lieut. A. J. Williamson, praying indemnity for his baggage and equipage, lost by the destruction of a transport vessel, have had the same under consideration, and report :

The memorialist was a lieutenant of the 3d infantry, U. S. Army. On the 8th December, 1850, in obedience to orders, he embarked on board the steamer South America, at Newport, Ky., for New Orleans, on his way to Texas. On the passage, the steamer took fire and was totally consumed, with most of the baggage of the passengers on board. Lieut. Williamson deposes that he lost his baggage and equipage, all of which was consumed by that casualty, to the amount of one thousand dollars. The value of the property is also sworn to by his brother, William Williamson.

The memorialist asks indemnity for this loss.

The committee can see nothing in the circumstances of this case different from that of any other loss, by an individual, of personal property, while in the service of the United States, without any fault on the part of any of the agents of the Government. The United States do not become the insurers of the personal and private property of those in their employ, and we are not aware that compensation has ever been made in like cases. If this case be within the general laws and regulations which govern the military service, in which personal property must be greatly and necessarily exposed to loss or damage, it is competent for the proper department to adjust it. But the committee are clearly of opinion that it is not a case demanding the special interposition of the legislative power. If losses of this nature are to be assumed by the Government, it should be by a general enactment, equally applicable to all like cases, and not by special favor to individuals. In accordance with these views, the committee submit the following resolution :

Resolved, That the prayer of the petitioner ought not to be granted.

Hamilton, Prout.

IN THE SENATE OF THE UNITED STATES.

JANUARY 6, 1852.
Ordered to be printed.

Mr. GWIN submitted the following

R E P O R T :

[To accompany bill S. 15.]

The Committee on Naval Affairs, to whom was referred the bill to establish a Navy-Yard and Depot on the bay of San Francisco, in California, report :

That they have given the subject that attention which its importance demands, and have been led into a brief review of the policy of the Government in establishing permanent navy-yards for the construction and repair of vessels of war.

The first attempt, under our present form of government, to commence a naval establishment, appears to have been demanded by the necessity of defending our commerce and citizens from the piratical depredations of the Algerine corsairs. An act was passed the 25th March, 1794, authorizing the building and equipment of six frigates. The passing of this act, as stated by General Henry Knox, then Secretary of War, and in charge of naval affairs, "created an anxious solicitude that this second commencement of a navy for the United States should be worthy of their national character;" and he stated that "the building of the ships has been directed in several ports of the Union, in order, as well to distribute the advantages arising from the operation, as to ascertain at what places they can be executed to the greatest advantage." Thus it appears that in the beginning, by way of experiment, if not from the necessity of the case, the public vessels of the Government were constructed in private yards; but this experiment proving ineffectual, none of the vessels having been completed, a committee of the House of Representatives, on the 25th January, 1797, recommended that a sum of money should be appropriated for the purpose of purchasing and fitting up a naval yard. Another committee of that House, on the 8th of March, 1798, stated, in reference to constructing public ships in private yards, that "in the view which, on several occasions, this committee have taken of the subject of providing a naval armament, they have not failed to observe the apparently enormous expenses and unaccountable delays which have attended every attempt of this kind;" and in a letter from James McHenry, Secretary of War, to a committee of the House of Representatives, dated the 22d March, 1798, he stated that "the great delay that has occurred in the present undertaking must always be more or less experienced when heavy ships of war are required to be suddenly built, and the Govern-

ment not previously possessed of the necessary timber and materials. It is certainly an unfit time to look for these, and prepare a navy-yard, when the ships are required for actual service. It is not to be expected that the large pieces of heavy timber suitable for ships of war will be found at market, or accumulated in private magazines for sale, when wanted on pressing occasions. Do not these circumstances point to the expediency of a legislative provision commensurate to so important an object?" And again, in a state paper emanating from Benjamin Stoddard, the first Secretary of the Navy, on the 25th April, 1800, he said: "In this view of the subject, and believing that it is the truest economy to provide at once permanent yards, which shall be the public property, and which will always be worth to the public the money expended thereon, instead of pursuing the system at first adopted, which, with the experience before us, can only be justified on the ground that the ships now ordered are the last to be built by the United States; the Secretary of the Navy has had but little difficulty in making up his opinion that the proper course to be pursued is, to make the building yards public property, and to commence them on a scale as if they were meant to be permanent." In another communication upon the subject, Mr. Stoddard declares, that "docks for repairing ships ought to be convenient to the sea, and yet not easily accessible to an enemy." Yards for building the ships, where large quantities of materials would be deposited (the destruction of which would always be an object with an enemy) should be, according to the opinion of Mr. Humphreys, a gentleman of considerable science and experience in naval architecture, "in the vicinity of a commercial city, for the convenience of procuring able workmen," "where the harbor is secure from freshets and stormy weather, out of the reach of an enemy."

These opinions of public officers of high reputation in the infancy of our naval establishment, have been verified and confirmed by an experience of upwards of fifty years, and have been referred to because of their coincidence with the opinion of this committee, as to the advantage of establishing, at once, a permanent navy-yard and depot on the bay of San Francisco, in California, rather than to depend upon private establishments for the repairs or building of public vessels in that bay. The committee being so well satisfied of the necessity for having a naval establishment in that distant harbor, that the only question presenting itself to their consideration was, whether such an establishment should be of a temporary or permanent character; and the authorities herein referred to, together with the settled policy of the Government, are considered entirely conclusive upon this subject.

Whether this subject is considered as regarding, simply, our naval establishment, or in a commercial, fiscal, maritime or national point of view, it loses none of its intrinsic importance.

As regards the vessels of the navy cruising upon that once distant and foreign coast, but now our own coast and our own country, none better remember, nor have felt more sensibly the want of a port of safety in that region than our gallant naval officers (who have served for many years past upon the voyages and cruizes in the Pacific,) both for the repair or refitting of their vessels, &c., the recruiting of the health and strength or numbers of their crews. The vessels of war taking their departure from an Atlantic port for a three years' cruise, and making the long voyage around Cape Horn and along the western coast of this continent, on arriving in the bay of San Francisco, instead of finding themselves thousands of miles from those means

of repair and succor of any kind of which they might stand in need, will, when this yard shall have been established, find themselves again at home, where every repair, aid and assistance can be obtained. But the importance of this establishment to our navy would be most felt should this country unfortunately be involved in war with a powerful maritime nation or nations, because, in that event, should numerous and heavy fleets cut off or harass our cruisers from the Atlantic ports for the protection of our interests in the Pacific, we should then possess the means and the ability to construct and fit out war steamers and other vessels of war from the bay of San Francisco, capable, with the aid of the whalers' crews, to drive every hostile sail from that coast.

In a commercial and fiscal point of view, the establishment of this navy-yard and depot, and the defences necessary to sustain it, adding, as it will not fail to do, to the security of the commercial marine, and the numerous vessels engaged in the whale fisheries in the Pacific, the trade and commerce of San Francisco and other ports in California and Oregon, will derive additional importance and encouragement and consequent extension, which will no doubt be sensibly felt in the revenues from the customs in those ports, and the benefits to be derived from this source by the Government, will greatly overbalance any expenditure that may be made for this object.

In an extended maritime and national aspect, the creation of a strong naval establishment in the bay of San Francisco, in the opinion of the committee, is of very great importance to this country. When the immense value of the whale fisheries and trade to the western coast of the two Americas, to China and other countries of Asia, and the islands of the Pacific and Indian oceans, and the daily increasing trade and commerce of California and Oregon, are all considered, it must be confessed, that this Government is under the strongest obligations to lose no time in providing the most ample means for the future security of all these interests, which interests belong almost entirely to the commercial cities of the Atlantic coast, and the enterprising mariners from New England engaged in the whale fisheries; while California, enjoying only incidental advantages from these operations of trade and commerce, and the establishment of these resources and means of defence upon her soil and in her waters, will have the honor of affording upon her territory, a firm resting place for the fulcrum of the lever of that power of this great country, which is hereafter to maintain its maritime rights and peace upon the vast expanse of the Pacific and Indian oceans. For all great national purposes, whether defensive or offensive, or in a state of war, or protective of our commerce and the rights of our citizens on the ocean in time of peace, if the right arm of our power is to be put forth from the Atlantic and Gulf coast, the left hand of that power must necessarily be extended from the Pacific coast.

In reference to the interests enumerated above, it is only necessary to take a retrospective view of the extent of the commerce and navigation of those regions from the ports of the Atlantic, in past years, and of the vast increase of this commerce and navigation since the important acquisition of California by the United States. The direct trade of California, concentrating almost exclusively in the harbor of San Francisco, for the year ending 30th June, 1851, as appears by an official statement from the register of the treasury, employed the number of vessels and amount of tonnage as follows: American vessels entered, 379 of 115,779 tons; cleared, 815 vessels of 293,435 tons; foreign vessels entered, 482 of 142,349 tons;

cleared 515 vessels of 136,735 tons. Although this exhibit by no means embraces the whole extent of this trade, it is sufficient to show the large amount of commerce which has grown up in that State in so short a period of time, and the immense extent to which this commerce is destined to arrive in the future, judging from the unparalleled rapidity with which it has progressed heretofore. In addition to this direct trade, there must be taken into account the numerous fleets of whaling vessels from the New England States frequenting the Pacific ocean, with a tonnage averaging for the last six years, 181,651 tons, and employing a large force of the ablest seamen, and returning to the Atlantic ports freighted with their rich cargoes of sperm oil. And, in further addition, must be enumerated, all the shipping and capital engaged in the extensive and valuable trade and commerce with China and other countries of Asia, and with the Eastern Archipelago and other islands in the Pacific and Indian oceans.

To realize the importance of the proposed naval establishment in the bay of San Francisco, it is necessary to consider the value and extent of the interests enumerated above, and the liability, in the event of a war with one or more powerful maritime nations, as before stated, to the injury or ruin of those interests. This would be prevented by providing, in time, the means of constructing and repairing public ships in a secure harbor on the Pacific coast, defended by sufficient fortifications against any attack that could be made against it, either by land or water.

The national interests, confirmed policy, and present naval exigencies of the country manifestly requiring the establishment of a permanent navy yard and depot on the bay of San Francisco, in California, the committee have examined the bill referred to them for that object with much care, and believe that it is well calculated to effect that purpose; but the committee having taken a full view of this subject, believe that such an establishment as is proposed by this bill, will not be complete without the addition of a basin and railway, which, in connection with the floating dry-dock authorized and provided for by the act of the 3d March, 1851, will be an indispensable appendage to the navy-yard and depot to ensure the prompt and efficient repair and refitting of the public vessels, and to possess which facilities in the bay of San Francisco, is of great importance to the Government. The committee therefore recommend that provision be also made for these objects, in order that the board of officers authorized by the bill may, in their selection of the site for the navy-yard and depot, also embrace in their view and arrangements all of these necessary objects. In the event of a war, these appendages to the navy-yard would be indispensably necessary to prepare vessels for sea on a short notice, or to repair with promptitude vessels that may be disabled in conflict. It may also be remarked that the floating dry-dock now being constructed would be of little utility without the addition of the basin and railway; indeed, the navy-yard or dock itself would be deprived of a most important feature, now considered as an integral and essential part of every building and repairing navy-yard, and absolutely necessary for the use of the navy, whether in a state of war or peace.

The committee have deemed it their duty to propose this additional provision, from several important considerations. In the first place, it will secure economy in the construction of these several objects, by having them constructed simultaneously or in reference to each other, avoiding alterations and disadvantageous expenditures and loss of time in a separate and subse-

quent arrangement and construction of them. In the second place, a provision for them all at this time, will give the Government the advantage of the practical experience and scientific knowledge of the board of officers that may be appointed to establish the site for the navy-yard, to make such selection of a site as may be best adapted to all these indispensable objects together; and, in the third place, all can be conveniently arranged with reference to the same system of police, and be brought within the same plan of defence.

In the consideration of this subject, the committee have been so deeply impressed with the importance of the duties to be performed by the board of officers, to be composed of officers of the navy and United States engineers, and to be appointed for this service, and the necessity for an elaborate and thorough examination and survey of the bay of San Francisco and its adjacent grounds, to enable them to make an impartial selection upon professional and scientific principles, and with reference solely to the perfect adaptation of the site and grounds for the purposes intended, and to the permanent interests of the Government, that they have considered it proper to recommend a provision for such additional compensation and travelling expenses to these officers, as not only to meet the heavy additional personal expenses to which they will be subjected in the performance of this duty, but to secure the services of officers in every way qualified for this delicate and highly important and responsible duty.

The committee therefore report the bill to the Senate with an amendment providing for these objects, and recommend its passage with the amendment.

Statement exhibiting the number of American and foreign vessels, with their tonnage and crews, which entered into and cleared from San Francisco and other districts of California, during the year ending June 30, 1851.

DISTRICTS.	AMERICAN VESSELS.						FOREIGN VESSELS.					
	Entered.			Cleared.			Entered.			Cleared.		
	No.	Tons.	Crew. Men. Boys.	No.	Tons.	Crew. Men. Boys.	No.	Tons.	Crew. Men. Boys.	No.	Tons.	Crew. Men. Boys.
<i>San Francisco.</i>	89	24,894	Not reported	194	66,949	.....	152	40,427	Not reported	147	37,404	.....
	116	30,792	in the abstract	282	95,287	.....	143	41,921	in the abstract	151	38,995	.....
	106	32,361	.....	166	55,077	.....	107	34,994	.....	104	30,886	.....
	57	16,570	.....	169	68,245	.....	77	24,229	.....	112	31,700	.....
	368	104,817	.....	801	285,558	.....	479	140,971	.....	514	136,485	.....
<i>San Diego.</i>	4	4,192	254	7	2,782	155	1	190	15	.....	.....	.....
	5	4,770	278	5	2,755	160	2	1,188	38	.....	1	250
	9	8,962	532	12	5,537	815	3	1,378	63	.....	1	250
<i>Monterey.</i>	2	2,200	60	2	2,340	60	1	.....	.....	.....	.....	.....
	379	115,779	592	815	293,435	375	2	482	53	.....	516	136,735
	Total of the three districts.											10

N. SARGENT, Register.

TREASURY DEPARTMENT, Register's Office, December 27, 1851.

IN THE SENATE OF THE UNITED STATES.

JANUARY 7, 1852.
Submitted, and ordered to be printed.

Mr. DAVIS made the following

R E P O R T :

[To accompany bill S. 68.]

To Committee on Commerce, to whom was referred the bill for the relief of Charles A. Kellett, adopt the following report, made by Mr. Grinnell, of the House of Representatives, at the first session of the thirtieth Congress :

The petitioner states as a reason why said money should be refunded, that said junk was not brought to this country for the purposes of commerce, but as an object of curiosity; that the expenses have far exceeded any receipts for the exhibition of said junk; that he is a young man without property; his object was to benefit science by producing to the western world a curiosity from the eastern.

Your committee find a precedent for refunding said tonnage-duties and light-money, in the case of a Greek vessel that arrived some years since at New York; they have, therefore, unanimously agreed to report a bill for refunding the same.

Hamilton, print.

IN THE SENATE OF THE UNITED STATES.

JANUARY 9, 1852.

Submitted, and ordered to be printed.

Mr. BAYARD made the following

REPORT:

[Which was considered by unanimous consent and concurred in.]

The Committee of Claims, to whom was referred the memorial of H. P. Dorsey, report:

That conceding the truth of the statement made in the memorial of the claimant, the committee are of opinion that the facts contained in the statement do not present the semblance of a claim against the Government, upon which the claimant is entitled to relief upon principle or precedent. The statement of facts in the memorial is, however, loose, and not sustained by the documents accompanying it in all respects. The Committee therefore recommend the adoption of the following resolution:

Resolved, That the claimant is not entitled to relief.

Hamilton, Print.

IN THE SENATE OF THE UNITED STATES.

JANUARY 9, 1852.

Submitted, and ordered to be printed.

Mr. BAYARD, made the following

REPORT:

[To accompany bill S. No. 54.]

The Committee of Claims, to whom was referred a bill (S. 54) for the relief of Theodore Offut, report:

That two reports in favor of the passage of a bill similar to that referred, have been already made by the Committee of Claims—one at the second session of the thirtieth Congress, and the second at the first session of the thirty-first Congress.

From these reports and the accompanying documents, the parts upon which the claim rests appear to be, that Theodore Offut was a private in Captain W. C. Pollard's company of mounted volunteers, belonging to Col. Gentry's regiment raised in Missouri, and mustered into service in the fall of 1837, at New Orleans. That by the unauthorized act of Captain Pollard, a bay mare, the property of the said Theodore Offut, was, without his consent, sold and turned over to the United States quartermaster Major Brant, in the month of January, 1848. That though Capt. Pollard was paid for the mare, he received the money without authority, and thus the claimant has been deprived of his property without his consent and without compensation. The mare was valued at ninety dollars when entered into service. Having no doubt that the claim for which the bill provides, is a perfectly just and legal claim against the Government, the committee recommend the passage of the bill with the following slight amendment. After the word Pollard, at the end of the eighth line, add the words "without authority."

Hamilton, printer.

IN THE SENATE OF THE UNITED STATES.

JANUARY 10, 1852.

Submitted, and ordered to be printed.

Mr. DAVIS made the following

R E P O R T :

[To accompany bill S. 69.]

The Committee on Commerce, to whom was referred the bill for the relief of Enoch Baldwin and others, report :

It appears, by satisfactory evidence, that in 1822, the British brig Despatch, Lefevre, master, being at Tobago, in the West Indies, by the advice of consignees, took on board a quantity of rum, the produce of that island : that while there, American vessels were allowed to enter and clear upon the same conditions as English ; and that this cargo was taken on board under the full belief that no discriminating duties would be exacted upon the vessel if she cleared for and entered in the United States. The vessel accordingly cleared for Boston, and after entering and landing one hundred puncheons of her cargo, consigned to one Aaron Baldwin, she cleared for Campo Bello, in New Brunswick ; but having heard nothing at Boston, or in any other way, to lead them to believe that tonnage duties would be exacted in the United States, they entered the port of Lubec, in the state of Maine, and there landed the residue of the cargo on the first of October. The then collector of that port, Mr. Thalcher, states, under oath, that at the time of entry it was not only his belief, but it was the general impression in all quarters, that discriminating duties on tonnage were not, under the proclamation of the President, by which this trade was opened, demandable. In consequence, however, of such an opinion among collectors and merchants, a circular was issued by the Secretary of the Treasury directing the officers of the customs to exact such duties. The evidence shows this circular had not been heard of at Boston when the Despatch sailed, and did not reach Lubec till the third of October, two days after the cargo had been entered and landed.

Upon these facts Congress passed a law for the relief of the said Aaron Baldwin, the owner of the one hundred puncheons landed at Boston, remitting the tonnage duties exacted of him in consequence of said treasury circular ; but, by mistake, the owners of the two hundred and forty-eight puncheons landed at Lubec, were not included in the bill and have received no relief. It was supposed at one time that, while the relief granted to Aaron Baldwin was both just and right, yet Enoch Baldwin was not entitled to any interposition of Congress, as he must have known of the existence of the circular at the time of the entry. If he did know that fact, it is

difficult to understand why the entry was made, as he knew the duties must, in that case, be exacted and paid. It now, however, distinctly appears, by the statement of the collector, that nothing was known of the circular till the third of October, the entry being made on the first. It also appears, by the statement of the petitioners, and of Aaron Baldwin, who has no interest in this question, that nothing was known of the circular at Boston when the vessel sailed. Indeed, if there were no proof on this point beyond the fact that the entry was made, the committee think the presumption is of itself nearly conclusive that an entry would not be made, either at Boston or Lubec, of a foreign vessel subject to such heavy discriminating duties, as almost certainly to render a voyage unprofitable, when running against American vessels subject to no duty on tonnage.

The case, in the judgment of the committee, is satisfactorily made out, and they report a bill for the relief of the petitioners.

IN THE SENATE OF THE UNITED STATES.

JANUARY 12, 1852.

Submitted, and ordered to be printed.

Mr. HAMLIN made the following

REPORT:

[To accompany bill S. 108.]

The Committee on Commerce, to which was committed the memorial of the merchants, ship owners, and other citizens of Portland, Maine, asking for an appropriation for the erection of a Marine Hospital at that place, have directed me to submit the following report:

Portland is, and has been for many years, the largest seaport in the State of Maine, and contains at this time a population of about twenty-three thousand. It is distant, in a north-easterly direction from Boston, more than a hundred miles; and no marine hospital has ever been erected upon the whole coast easterly from Boston to the British provinces, a distance of more than four hundred miles—a coast upon which the people are more intimately connected with and engaged in commerce than any part of the Union. There is no section which furnishes a larger, if as large a number of seamen, or which has a stronger claim upon the fostering care of Government for aid and relief to its sick and disabled seamen. The seaman demands that aid, as a matter of right, and not as a form. The generosity and even providence of the seaman, in his pecuniary affairs, are well known wherever he is found; and for his aid and relief, when away from his home in sickness or distress, the law of June 16, 1798, provides that he shall contribute the sum of twenty cents per month, from his wages, to constitute a fund for that purpose. A wise and humane policy was thus established in the early part of the Government, and has been pursued to the present time, and a policy which requires the erection of hospitals as a part of the system. The contribution of this sum per month by the seaman to the hospital fund, does not relieve him at all from his liability, equally with other citizens, to the ordinary taxes for municipal and state purposes, and for the support of the general government.

The facts in this case show very clearly its justice and importance. Extensively as Maine is engaged and interested in commerce and all that relates to it, numerous as are her seamen, and so largely as they have contributed to the hospital fund, not one dollar has ever been expended to erect for the seaman a home within that State; but he has been left to be provided for as circumstances may offer. He is disposed of without due regard to his wants, and where that attention and treatment which his case requires cannot be had. A hospital will afford both. Besides this, the seamen

upon the coast of Maine, suffer peculiar exposure to sickness and disability, on account of the severity of the climate, and the dangerous navigation upon the coast during a large portion of the year.

The tonnage of Maine for the year ending June 30, 1851, was 536,415 tons, and exceeding in amount that of any other state, excepting New York and Massachusetts.

The tonnage of the district of Portland and Falmouth, at the same date, was 97,571, of which 69,887 tons are registered.

The number of seamen who enter and clear from that port will exceed two thousand annually. The number who enter and clear from other ports in Maine, is more than seven thousand annually, besides the still much larger number of seamen who are engaged in the coasting trade, and who contribute each their twenty cents per month to the hospital fund.

There was contributed to that fund the last year, in Maine, the sum of six thousand five hundred and eighty-four dollars and thirty-five cents, exclusive of three districts from which no returns have yet been received. These districts added, will make the amount nearly seven thousand dollars.

The location of Portland is most favorably situated for a hospital for the relief of sick and disabled seamen from all parts of the State. It is readily accessible at all seasons of the year, by the ordinary means of navigation, and by steam vessels which constantly ply upon the whole coast from Boston to the British provinces, affording an entire facility for sick and disabled seamen to resort to that place for hospital relief.

The matter has been submitted to the Secretary of the Treasury, and his approval and recommendation furnished and filed with the memorial. The sum named in the bill is that recommended by the Secretary, and is approved and concurred in by the committee.

From all the facts in the case, and from a careful consideration of the same, your committee are of the opinion that the prayer of the memorialists should be granted, and recommend the passage of the bill herewith reported.

IN THE SENATE OF THE UNITED STATES.

JANUARY 12, 1852.

Submitted, and ordered to be printed.

Mr. WADE made the following

REPORT:

The Committee of Claims, to whom was referred the petition of William A. Duer, of New York, administrator of William Duer, deceased, have had the same under consideration, and report :

This claim is for a balance of \$35,107 11, alleged to have been due to the late William Duer, growing out of certain contracts with the Government, of which one was made by him, in the name of Theodosius Fowler, with the Treasury Department, in 1790, and the other in his own name, with the War Department in 1791, both being for supplies for the army under General St. Clair in the year 1791.

Mr. Duer died in 1799, and without, as far as the evidence goes, having presented any claim against the Government for this indebtedness.

It appears from a report of a select Committee of the House of Representatives, made at the First Session of the Seventh Congress (American State Papers, vol. Claims, p. 259) on the petition of Theodosius Fowler, that Mr. Duer failed and became insolvent in 1793, and continued so till his death. In 1800, a suit was brought by the United States against Fowler, to recover a balance of \$10,799 29, under the above contract. Mr. Fowler claimed to be exonerated from this liability, on the ground that his contract had been transferred to Duer and that the Government had sanctioned and approved the transfer. He says, upon oath, "that the terms of the contract were adjusted by William Duer, and that he was not to have any interest or agency in it, although the principal mentioned in it, and believes it was well understood by the officers of the Treasury." And the committee came to the conclusion that the entire responsibility rested upon Mr. Duer, and "that no responsibility for any claim set up by the Government on account of said contract attaches to him," (Fowler.) In conformity with these views, resolutions were passed, extinguishing all claims against Fowler for moneys advanced on the contract.

Suits were also brought against Mr. Duer for large balances standing against him on the books of the Treasury, but they do not appear to have been prosecuted to final judgment. The entry on the margin of the docket is—"dead and insolvent many years since."

No further action appears to have been had, by any of the parties, in reference to Mr. Duer's account with the Treasury, until the year 1842, when the present claimant became possessed of the report on Fowler's case, above referred to—and upon that report he mainly rests his claim. But it should be observed, that in these proceedings, Mr. Duer was in no way directly

interested. All the proceedings before Congress were entirely between Mr. Fowler and the United States, and Mr. Duer's representatives in no way connected themselves with them. Under these circumstances, the petitioner still claims not only that the main facts necessary to sustain the report in the case of Fowler, but that the facts incidentally referred to, extracts from documents, since lost or destroyed, and like evidence, should be received to sustain this claim. The committee cannot assent to such a doctrine. They cannot admit that the report of a former committee, between other parties, giving the results to which the committee arrived, with references and extracts only as to the evidences upon which they based their conclusions, can be received at all as competent evidence in a collateral or any other case. Aside from the report above alluded to, there is no competent evidence before the committee to sustain this claim; and so far as appears from the report itself (and no other documents are produced) the testimony upon which its conclusions are founded, are of the most vague and unsatisfactory character. The sole object of this report was to show that Mr. Fowler was not indebted to the Government. It did not assume to adjudicate upon the state of Mr. Duer's accounts; his case was not before the committee.

This claim was examined at great length, by the Committee of Claims of the House of Representatives, at the 1st Session of the 29th Congress, who made a very elaborate report, adverse to its allowance. It was also reported against by the Senate Committee of Claims of the last Congress. Another serious objection to this claim is its antiquity. More than fifty years were suffered to elapse from the time of the transactions, before any claim was made against the United States. Although there is no strict rule in analogy to legal proceedings, which will operate strictly and without exceptions, as a statute of limitations, yet the principles of such statutes are applicable to claims, when the Government is a party, as well as between individuals; and although it is not impossible that a claim, which, for the first time, is made after the lapse of half a century, for compensation for property or the correction of an error in account, should be entertained, yet such cases must be very rare and should be sustained by very conclusive proof.

The proof in this case, in the opinion of the committee, is not at all of that character, and fails entirely to sustain any just claim against the Government.

This is the same conclusion to which the committee of the House of Representatives arrived, but which the memorialist says, in his present petition, was founded, as he believes, "upon imperfect, mistaken and incorrect views of the case." He also complains that the Senate Committee of the last Congress "acted under the same erroneous impressions, and implicitly adopted the House report, *without further investigation*." These are mere assertions, however, without any attempt on the part of the petitioner to point out or controvert the alleged mistakes or errors. On the contrary, the Senate Committee say, in their report, that, "impressed by the apparent sincerity of the conviction of the memorialist that injustice was done him by the former report, they have reconsidered the same with the attention due to the magnitude of the claim and to the circumstances under which it is presented by the memorialist, after the lapse of more than fifty years from the transactions out of which it is claimed to have accrued, but have been unable to arrive at any other result than that in which the former committee concurred."

The committee recommend the adoption of the following resolution:

Resolved, That the claim of the memorialist, William A. Duer, administrator of William Duer, deceased, be rejected.

IN THE SENATE OF THE UNITED STATES.

JANUARY 12, 1852.

Ordered to be printed.

Mr. SEWARD made the following

REPORT:

[Considered by unanimous consent, and concurred in.]

The Committee on Commerce, to whom was referred a communication from Aaron H. Palmer, which was accompanied by a description of the colonial dependencies of Japan, and a plan for opening that Empire to the commerce of the United States, respectfully report :

That the description of the colonial dependencies of Japan, submitted by Mr. Palmer, is represented by him as being an extract from an unpublished work on the geology, productive resources, trade and commerce of Japan, and the independent maritime nations of the East.

While no estimate of the value of the whole work can be safely grounded on the examination of the extract thus submitted, that extract seems to the committee to contain nothing demanding an immediate consideration by the national legislature.

The plan proposed by Mr. Palmer for opening the empire of Japan to our commerce appears to have been already submitted to the Executive Department, and to have been promulgated. No action of the Senate therefore is necessary to give it publicity. Our trade in the Pacific from the western coast of this continent, is just beginning to develop itself, and the committee are of opinion that action on the subject of new commercial arrangements with Oriental powers, may wisely be deferred until new exigencies shall arise, or at least until more full information shall have been obtained.

The committee submit the following resolution :

Resolved, That the Committee on Commerce be discharged from the further consideration of the communication of Aaron H. Palmer, relating to the colonial dependencies of Japan, and a plan for opening that empire to the commerce of the United States.

HAMILTON, printer.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1852.

Ordered to be printed.

Mr. SEWARD submitted the following

REPORT:

[To accompany bill S. 80.]

The Committee on Commerce, to whom was referred a bill for the relief of Thomas H. Leggett, submit the following report:

The committee recommend that the bill be passed.

The merits of the case are fully presented in Report No. 500, made by the Committee on Commerce in the House of Representatives, April 26, 1848, to which the committee refer.

The firm of Thomas H. Leggett & Co., the original claimants, consisted of Thomas H. Leggett, Ebenezer Wooster and Joseph L. Frame. The committee have satisfactorily ascertained that Thomas H. Leggett, in the bill named, is the only survivor.

The Committee on Commerce, to whom was referred the memorials of Thomas H. Leggett, report:

The memorialist represents that he was of the house of Thomas H. Leggett & Co., regular importers of dry goods at the city of New York, and that, on the 8th day of July, 1828, they imported into that city from Liverpool, and entered at the New York custom-house, two invoices of coarse woollen goods, consisting of blankets, flannels and backing baize, that cost £1,526 17s. 9d. British sterling, or \$6,786 15, on which they paid the duty, amounting to \$5,467, imposed by the tariff act passed May 19, 1828, to take effect on dry goods the 30th of June, and on iron and hardware the 1st of September, following. He further represents that the duty on the same goods, imposed by the tariff of 1824, the act governing imports until the passage of the act of 1828, would have been \$2,200 50, and that the increase of duty did not enhance their value; but, on the contrary, prohibited the importation thereafter of this kind of goods, and occasioned a greater loss on a large portion of this lot than their original cost in England.

The memorialist further represents that said goods were contracted for in the winter of 1827, to be delivered in the spring of 1828, and that they were shipped in two vessels at Liverpool, one of which sailed seven days before the passage of the law of 19th May, 1828, and the other a few days

after; and that it was impossible then to annul the contracts, or countermand the orders for their shipment, and that they would have been re-shipped but for assurances given by high functionaries of the Government, that in such cases relief would doubtless be afforded by Congress. For this object they united with other importers in a petition to Congress to pass a law for the refunding of the increased duties on dry goods, imposed by the tariff of 1828. The Senate and the House of Representatives, of the 22d and 23d Congress, passed, through their respective bodies, several bills for the relief of the importers generally, but neither of these bills became a law; but an individual case, similar in all its features with that of the memorialist, was redressed by an act approved on the 28th June, 1836. On that account, and the memorialist, sensible of the justness of his claim for the return of duties on the aforesaid importations, has petitioned Congress separately, resting his case on its individual merits.

Your committee have examined the facts and evidence submitted to them in this case, and are of opinion that the prayer of the petitioner ought to be granted, and have reported a bill accordingly. To give a more full statement of the case, they annex four letters of the petitioner, and the invoice and entry at the custom-house, and refer also to House document, No. 123, of the 23d Congress, 1st session.

No. 1.

To the honorable the Senate and House of Representatives of the United States in Congress assembled.

The memorial of Thomas H. Leggett & Co., of the city of New York, merchants, respectfully sheweth: That in the year 1828, in the months of February, March, April and May, a partner of their house was in England; and prior to any knowledge of a change being contemplated in the tariff of 1824, he had purchased goods for this market, on which they expected to pay the then existing duty, but, on the 19th of May, 1828, a new tariff was passed, to take effect on the 30th of June, increasing the duty to double and treble the former rates. On or about the 13th of May, (six days before the passage of the new tariff,) the ship Franklin, and soon after, the Britannia, sailed from Liverpool and arrived here about the 7th of July, with two invoices of merchandize, on account of the memorialists, on which they were obliged to pay a duty of \$5,467; whereas, by the former tariff of 1824, the duty would be \$2,200 50. The consequence was, a great loss to your memorialists. Instead of making a profit on our importation, we actually lost fully the difference of \$3,266 50. The articles being a kind of goods that would not bear the increased duty, and have, since that period, ceased to be an article of import. When your memorialists paid this duty, they had no doubt that it would be refunded on the facts being made known to Congress. The justice and propriety of doing so, they believe has always been admitted and practised upon. The time between the 19th of May and 30th of June, was too short for any countermand; and, in the case of your memorialists, their goods were actually shipped, having been purchased and contracted for two or three months

before the 19th of May, so that it was impossible for them to prevent their shipment.

It is generally understood to be the intention of Congress always to grant a reasonable time, which, in this instance, was not given, except on the articles of iron and hardware, which was extended to the first of September; therefore, your memorialist respectfully asks that this case will be taken into consideration, and an act passed, remitting the increased duty of \$3,266.50, and ordering the same to be refunded to him.

THOMAS H. LEGGETT.

No. 2.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled.

We, the subscribers, applied by memorial to the last Congress for a return of three thousand two hundred and sixty-six dollars, being for duties paid in the year 1828, under the tariff of May, in that year.

The Committee on Commerce, to whom our memorial was referred, reported adversely to our claim, on the principle that neither justice nor sound policy was in favor of it; whereas, we believe that, if ever a just claim was presented to Congress, ours is one; and, to confirm and justify us in our belief, a claim similar to ours (that of John F. Lewis) was allowed, and the duties refunded in 1836. And the Senate of 1833 passed a bill for the general relief of merchants who suffered by that hasty tariff, showing that they believed it to be just to do so. We ask, how it can now be said that justice and sound policy will not sanction our claim. The committee say that we carry on business with the full knowledge that Congress have the power to lower or raise duties at pleasure. * * * A power which they admit is not generally exercised without ample notice. In our case, the tariff was passed on the 19th of May, to take effect on the 30th June.—Our partner, who then resided in England, had made contracts with manufacturers before he had any knowledge of any contemplated change of the tariff, for blankets, flannels, andocking baize, to be made and delivered in April or May. It was not possible for us to countermand in time.—Among them, was the six bales ofocking baize, the duty on which was raised from four and a half cents per yard to twenty-two and a half cents. It would have been better for us to have thrown these six bales into the sea, at Liverpool, than to put them on board a ship as we did, and pay the extra duty, because they were not worth but twenty-five cents when here. At that price, they would have paid a small profit under the tariff which we had expected to enter them at. They cost in England about twelve cents. The blankets and flannels was not quite so bad, but the loss was very great on them.

In all cases, except that of the 19th of May, 1828, ample time has always been given; and it was admitted by members of that Congress, that it was a mistake in not allowing the same time on dry goods as on hardware; and they believed the duty would be refunded. We fully believed and expected it, or we should have reshipped the articles.

We always entertained the belief that our government meant to do

justly ; and that, in passing the tariff of the 19th of May, it was hastily done, and not intended to operate as it did in our case, like an *ex post facto* law ; and, as respects sound policy, we believe our government will be great gainers in its revenue by strictly adhering to the wise policy commenced in the days of Washington, in all the custom houses, viz : In all cases of doubt, lean towards the merchant. So long as that policy governed, was there ever a government that had so little to fear from dishonesty and fraud ?

We beg that our claim may have another fair consideration.

Very respectfully,

THOMAS H. LEGGETT & CO.

NEW YORK, *March 15, 1848.*

No. 3.

NEW YORK, *2d month 23d, 1848.*

DEAR BROTHER : Thy letter of the 21st is received. In answer to thy first question—When did we order our goods ?

Answer.—E. Wooster, my partner, left New York in October or November, 1827, and in the following months of December, January, February, and March, 1828, purchased and contracted for the goods shipped in May.

Second question.—When did the law imposing extra duties take effect, and when did it pass ?

Answer.—It took effect on the 30th June, 1828 ; it passed the 19th of May, 1828.

Third question.—At what time did it originate in Congress ?

Answer.—I cannot now tell exactly when. Can thee find out by reference to the minutes ?

Fourth question.—Did the goods sell for profit ?

Answer.—No ; but a heavy loss. It would have been great saving to have reshipped the goods, but it was generally supposed that the duty would be refunded, or they would have been reshipped. The change of duty was enormous ; on some things from thirty per cent. to two hundred per cent. It was the time of square yard minimum duty.

I suppose it probable that the new tariff may have been spoken of in Congress as early as February, 1828 ; that would have been too late for us to countermand, as E. W. contracted for the goods, about that time, to be delivered as soon as manufactured, which was in May. Our case is a plain one. C. C. Cambreleng always said it would be refunded, and I presume would have been, if we had kept by ourselves and not united with the great body of merchants—some of whom, in all probability, made claims not like ours. One man in Philadelphia kept by himself, and his claim was allowed in 1836, viz : John F. Lewis.

If peace with Mexico takes place, I hope thy claim will soon be allowed and paid.

Affectionately, &c.,

THOMAS H. LEGGETT.

AARON LEGGETT.

No. 4.

NEW YORK, 3d month 17th, 1848.

DEAR FRIEND: I have a letter from my brother, Aaron Leggett, informing that a memorial which I had last year presented to Congress had been called up by Mr. Maclay, and was now before the Committee on Commerce. Not having been aware of it, I had prepared a new memorial which I sent to my friend, Frederick A. Tallmadge, for presentation.

The particulars of my case are these: At that period of time, year 1828, my partner continued or resided in England for about nine months of the year, in order to purchase our goods. During that winter, say in January and February, he made contracts with manufacturers for blankets, flannels, and bocking baize, to be manufactured and delivered to him in Liverpool in April and May following. At that time he could not and did not know of any change contemplated in our tariff; neither could we know of it here in time to prevent these contracts, even by its being talked of in Congress. Those who were in favor of a tariff for protection I believe did not agitate the subject in time for that. But when the tariff did pass on the 19th of May, it was to take effect on the 30th of June on dry goods, and on hardware not until the 1st of September, thus giving ample time to the hardware merchant to countermand his orders, but not to the dry goods.

Our goods were then in Liverpool ready for shipment; in fact, I think they were then shipped before the 19th May. We had six bales of bocking baize that it would actually have been better to have thrown into the sea than have had them shipped. They cost in England about twelve cents a yard; on arriving here the duty was raised from four and a half cents per yard, to twenty-two and a half cents, and they were only worth twenty-five cents. If the duty had not been raised, we should have made a fair profit at that price; but, as it was, our loss was about fourteen cents per yard, rather more than the cost in England.

The duty on that article was increased so greatly in consequence of the minimum rates then adopted. All articles of that kind which cost twelve cents was considered to cost fifty cents a square yard, and a duty of forty per cent. charged accordingly. On blankets and flannels, the duty was not increased so much in proportion, consequently the loss was not so great, but it was very heavy on them.

John F. Lewis, of Philadelphia, was allowed the duty in 1836. He had but one article, (matting,) which he sold at auction, and made a statement showing the exact amount of his loss. My case in the bocking baize was more unfortunate than his, as we lost more than the first cost of them.—Our case was so hard a one, that I believed if we had applied alone, we should have been redressed long ago. One reason why we did not continue the application after 1836, was the general prostration of mercantile affairs, in which we suffered so much, and the Government seemed not in a situation to be appealed to. Death and bankruptcy has swept off most of the applicants. Walter Titus, who applied last winter, died lately in poverty, soliciting from C. W. Lawrence a situation in the custom-house. His claim was only six or seven hundred dollars—a fair and honest one I believe. Now it is too late.

I hope my claim will be considered a fair and just one, and acted upon with despatch. If it should be desired, I would come on and go before the committee.

Very respectfully, thy assured friend,

THOMAS H. LEGGETT.

DUDLEY S. GREGORY, Esq.

No. 5.

NEW YORK, 3d month 20th, 1848.

As one of the Committee on Commerce, I write this, to give particular information concerning the memorial which I have presented for return duties.

The tariff of 1828 was passed on the 19th of May, to take effect on the 30th of June on dry goods, and on hardware the 1st of September, allowing ample time to the hardware merchant, but not to the dry good.

My partner was in England, having left here in October or November, 1827, and during the winter he made contracts with manufacturers for goods, to be made and delivered to him in Liverpool in the spring, as had been our custom for years. In May, before the passage of the tariff, he received blankets, flannels, and bocking baize, which were shipped, and arrived here in July, on which the duties were raised so enormously that we did not obtain cost and charges for any of those articles. On six bales of bocking baize the loss was more than the first cost in England. It would actually have been better, strange as it may seem, to have thrown them in the sea at Liverpool, than to have them come, and pay the new duty. It arose from the minimum rates then adopted. They cost about twelve cents per yard, (six pence sterling.) The duty was raised from four and a half cents to twenty-two and a half cents per yard. Their value was not enhanced by the increased duty. They were worth but twenty-five cents, and brought no more. At that price it would have given us a fair profit, but the new duty made them cost about thirty-nine cents; so that we lost fourteen cents per yard—rather more than they cost in England. They were used chiefly for linings to seamen's clothes. The new duty amounted to prohibition, and I believe they have never been imported since.

It was argued by some members of Congress, when the merchants petitioned for redress in a body, that it mattered not what duty the merchant paid; that he estimated it in the cost, and would charge the profit. This case proves the fallacy of that argument.

John F. Lewis, of Philadelphia, did not join with the body of merchants, but petitioned by himself; and his case being similar in result, as to loss, with ours, his claim was allowed, and the duty was refunded in 1836. (See Doc. No. 95, 23d Congress, 2d session, H. R.; and Laws of the United States, vol. 9, p. 410, ch. 552.)

If it should be asked, "Why have you left this matter so long?" the truth is, while I was in business I did not mind the loss; and like the generality of merchants, after the general bill failed in 1834-'35, I gave it up in despair, and was not disposed to beg. But now it is a matter of some

importance; the money will be of service, and as the claim, in my opinion, is a just one, I hope to obtain it.

All the members of that Congress with whom I conversed said the duty ought to be, and they believed would be refunded, as it was a mistake in not allowing the same time to dry goods as hardware; but at that time the grand object was protection.

The duty on blankets was not increased so much, being *ad valorem*; it was from five to thirty-five per cent. But flannels were under the minimum rates; that is, deemed to cost fifty cents the square yard. Being a finer article than the stockings, the duty was not felt in proportion, and the loss was not so heavy; but the duty prohibited their importation afterwards.

Excuse my troubling you with this long history; but having, last winter, done nothing more than send my memorial, I think the committee made a report different from what they would have done, had they known the facts of the case.

Respectfully, &c.,

THOMAS H. LEGGETT.

No. 6.

NEW YORK, 3d month 28th, 1848.

ESTEEMED FRIEND: In the report made to Congress last winter, the committee said that we do business with the full knowledge that Congress have power to raise or lower the duties at pleasure—meaning, I suppose, at any moment. But is that so? Has Congress ever acted, or justified that principle? On the contrary, has it not always been considered right and proper that ample time should be given to the merchant, otherwise he might be ruined, as we might have been, if all our importation had been stocking baize. The two invoices on which we claim was for twenty-five bales blankets, eight bales stockings, and eight bales flannel.

Since my last I have calculated the loss on three bales of the flannel, which were all of one kind, low-priced:—

First cost in England, £167-----	\$742 50
Duty paid by the new tariff-----	832 00
Shipping charges, exchange, &c-----	245 00
	<hr/>
	1,819 50
Sold them for-----	1,250 00
	<hr/>
	\$569 50
	<hr/>
Lost on eight bales stockings-----	\$1,460 00
“ three “ flannels-----	569 00
	<hr/>
	\$2,029 00

The amount lost on the finer flannels and blankets it would be impossible to say, exactly. The amount we claim is the difference of duty, \$3,266.

Our loss on the bockings, and three bales flannel, we know to be over \$2,000; and I am sure we lost more than \$1,200 on the others. Very few of the importers, probably, had so hard a case. We had been in the practice of importing some very low-priced articles, on which the duty, by the maximum calculation, fell so very heavy; and they were of that description, that no duty enhanced their value in this market. It only prohibited their importation, and answered the protective policy.

John F. Lewis' case was similar in that respect to mine, and he was reimbursed in 1836. It would not be unjust if the interest was added to my claim from that year; and if consistent with rule (I have heard that Congress never allows interest in any case,) I shall be glad.

Excuse my troubling in this manner; but as my brother informs that thou hast kindly manifested some interest for me, I feel anxious that thee should know as much of the case as possible.

With sentiments of respect, I am thy assured friend,

THOMAS H. LEGGETT.

DUDLEY S. GREGORY,
Member of Congress.

No. 7.

Consignee, Importer, or Agent's oath.

I, Joseph L. Frame, do solemnly and truly affirm, that the invoice and bill of lading now produced by me to the collector of New York, are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandize imported in the ship Franklin, whereof Taylor is master, from Liverpool, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandize; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandize, according to said invoice and bill of lading; that nothing has been, on my part, nor to my knowledge, on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandize; and that if, at any time hereafter, I discover any error in said invoice, or in the account now rendered of the said goods, wares, and merchandize, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly affirm that, to the best of my knowledge and belief, T. H. Leggett, E. Wooster, and J. L. Frame, of New York, are the owners of the goods, wares, and merchandize mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost, or fair market value, at Bristol and at Manchester, May 1st and 13th, 1828, of the said goods, wares, and merchandize, all the charges thereon, and no other or different discount, bounty, or drawback, but such as has been actually allowed on the same.

JOSEPH L. FRAME.

Affirmed to this July 8, 1828, before me,

JNO. KEAMY,
Deputy Collector.

Rep.—2.

Number	Packages and contents.	Cost of goods per square yard.	35 per cent.	Total.	No. of sq. yards at 50 cents.	Cost of sq. yards at 50 cents.	Charges at 40 per cent.
		£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.
819—320	1 bale, containing two trusses blankets.....	£14 15, £14 15	29 10 0	29 10 0			
327—328	1 bale, containing two trusses blankets.....		29 10 0	9 10 0			
335	1 bale blankets.....		32 7 0	32 7 0			
336—340	5 bales, the same as 335.....		161 15 0	161 15 0			
341	1 bale blankets.....		25 14 0	25 14 0			
342—352	11 bales, the same.....		282 14 0	282 14 0			
353	1 bale blankets, containing two trusses... £18 12 6, £18 12 6		37 5 0	37 5 0			
354—357	4 bales, containing two trusses each, the same.....		149 0 0	149 0 0			
358	1 bale backing.....		31 8 5	31 8 5			0 8 6
359	1 do.....		31 9 7	31 9 7			0 8 6
360	1 do.....		31 10 10	31 10 10			0 8 6
361	1 do.....		39 16 1	39 16 1			0 9 0
362	1 do.....		40 2 9	40 2 9			0 9 0
277	1 bale flame's.....		91 18 2	91 18 2			0 10 0
278—281	4 bales, the same.....		367 12 2	367 12 2			2 0 0
			638 17 8	747 15 0	13,750.09	629 4 2	4 13 6
	Cash discount on 819—320, 327—328, 336—340.....		22 0 0	22 0 0			
			632 17 8	725 15 0	13,750.09	629 4 2	4 13 6
	Cash discount on 341—362, 277—281.....		63 0 0	43 12 6		62 10 8	0 9 4
			570 17 8	682 2 6	13,750.09	565 13 6	4 4 2
	Charges.....		10 14 1	11 10 0			10 11 1
			581 11 9	698 12 0	13,750.09	565 13 6	14 18 3

$$13,750 \times 35 = \$6,875 + \text{charges}, \$66 = \$6,941 \text{ at } 40 =$$

NEW YORK, 7th month 7, 1828.

THOMAS H. LEGGETT & CO.

Consignee, Importer, or Agent's oath.

I, Joseph L. Frame, do solemnly and truly affirm, that the invoice and bill of lading now produced by me to the collector of New York, are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandize, imported in the ship *Britannia*, whereof Marshall is master, from Liverpool, for account of any person whomsoever, for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandize; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandize, according to said invoice and bill of lading; that nothing has been, on my part, nor, to my knowledge, on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandize; and that if, at any time hereafter, I discover any error in the said invoice, or in the account now rendered of the said goods, wares, and merchandize, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly affirm that, to the best of my knowledge and belief, T. H. Leggett, E. Wooster, and J. L. Frame, of New York, are the owners of the goods, wares, and merchandize, mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost, or fair market value at Bristol and at Manchester, May 29, 1828, of the said goods, wares, and merchandize, all the charges thereon, and no other or different discount, bounty, or drawback, but such as has been actually allowed on the same.

JOSEPH L. FRAME.

Affirmed to this July 18, 1828, before me,

JNO. KEARNY,
Collector.

IN THE SENATE OF THE UNITED STATES.

JANUARY. 14, 1852.

Ordered to be printed.

Mr. BRIGHT submitted the following

REPORT:

[To accompany the joint resolution S. 10.]

The Committee on Finance, to whom was referred "a resolution for the relief of Alexander P. Field, late Secretary of the Territory of Wisconsin, and his sureties," beg leave to report :

That from the statements presented to the committee, it appears that said Field performed the duties of Secretary of the Territory of Wisconsin, from the 5th of May, 1841, to the 9th of March, 1844, during which time he disbursed large sums of money, drawn from year to year from the United States treasury. That among other disbursements, he was entrusted with the disbursing of money appropriated for certain arrearages of legislative expenses, which had accrued before he assumed the duties of Secretary, the accounts for which the act of appropriation provided should be settled at the proper office of the United States Treasury Department. In the autumn of 1843, said Field deposited in the Treasury Department sundry vouchers and accounts for said disbursements, which nearly covered the whole sum for which he was charged, and left them there for adjustment, without giving any further attention to them. On adjusting said accounts and vouchers in 1845, the officers of the Treasury Department found them in an imperfect and confused state : and not having the information which Field could have given respecting them, they struck a balance against him and his sureties of \$5,571 10, by suspending certain vouchers and accounts for which a credit is claimed.

No demand has ever been made upon said Field for this balance, and a suit for the same is now pending against his sureties, who have been at much trouble and expense to present to the Treasury Department evidence to satisfy the proper accounting officers that most of the credits claimed are equitable and just. Some of them, however, are of such a nature and form that they cannot be allowed without the exercise of a discretionary power, which said officers are unwilling to assume ; and they have suggested to the sureties an application to Congress for authority to settle the accounts of said Field upon principles of equity and justice.

The committee recommend the passage of the resolution referred to them without amendment.

Hamilton, *Print.*

WASHINGTON, D. C., January 7, 1852.

SIR : In reply to your inquiries in relation to the balance claimed by the Government from Alexander P. Field, late Secretary of the Territory of Wisconsin, I beg leave to submit to you the following statement of facts :

The said Field entered upon the duties of the said office on the fifth day of May, A. D. 1841, and continued in office until his successor, W. R. C. Floyd, executed his bond, and took charge of the office, on the ninth day of March, 1844.

During the period he was in office, said Field disbursed large sums of money, which he drew from year to year from the Treasury of the United States, and among other disbursements he was entrusted with the disbursing of a large sum appropriated for arrearages of legislative and other expenses which accrued before he assumed the duties of the said office, and which the act of appropriation provided should be disbursed at the office of the Treasury of the United States.

In the autumn of 1843 the said Field deposited in the proper Department of the Government, sundry vouchers and accounts for disbursements, made to cover nearly the whole sum for which he was charged, and left the same for adjustment, without any further attention on his part whatever.

By the adjustment made in the proper Department in 1845, from the imperfect and confused accounts of the said Field, and without the aid of any of the light that could have been thrown upon them by him, a balance was struck against him and his sureties of \$5,571 10. Owing to a suspension of a portion of the account and vouchers, for which credit was claimed, no demand has ever been made upon said Field for said balance, but a suit for the same is now pending against myself and others as his sureties.

I have been able, after great trouble and expense, to present to the Department such additional evidence as to satisfy the proper accounting officers that most of the credits claimed are equitable and just, and ought to be carried to the credit of the said Field ; but some of them are of such a character and are in such a shape, that they cannot be allowed without the exercise of a discretionary power, which the said officers are unwilling to assume ; and it is at the suggestion and with the approbation of the proper accounting officers of the treasury, that the application is made to Congress for authority to adjust and settle the accounts of the said Field upon principles of equity and justice.

On the other side you will find a statement of the items that have been suspended.

Very respectfully, yours, &c.,

E. BRIGHAM.

Hon. B. C. EASTMAN,

House of Representatives.

List of items claimed by A. P. Field, and his sureties, that have not been allowed by the proper accounting officers of the Treasury.

For disbursements on account of arrearage fund.

Item No. 1.	W. W. Wyman, payment on bond not yet surrendered -----	\$437 00
"	2. C. C. Shales, payment on his bond not surrendered---	1075 00
"	3. Over payment to Isaiah Noonan, for printing-----	100 41
"	4. Over payment to John Catlin-----	107 00
"	5. Geo. J. Coates' bond, wanting Gridley's endorsement	100 00
"	6. E. Slingberland's bond, wanting J. Kneeland's endorsement-----	100 00
"	7. James Sullivan's bond, wanting his own endorsement	35 00
"	8. Appropriation of legislative assembly, for expenses of journey to Washington, procuring and transporting funds, &c.-----	800 00

For disbursement on account of legislative expenses.

Item No. 9.	Payment to Barlow Shackleford-----	6 65
"	10. Appropriation of Legislative Assembly, February, 1843, for expense to Washington, procuring and transporting money for expenses of Legislative Assembly-----	800 00
"	11. Appropriation for office rent, stationery, &c.-----	100 00
"	12. Appropriation for postage-----	100 00

Items Nos. 8 and 10, in the foregoing suspended amounts, it is believed, are all the items not embraced in the estimates upon which appropriations of Congress were made, and all which the proper accounting officers are not fully authorized to adjust and settle. Those items are appropriations made by the Legislative Assembly, not for extra compensation, but for moneys actually and necessarily expended in procuring, transporting and disbursing funds, and for which he has received no credit during the whole term of his service, notwithstanding such allowances have always been made to his predecessors.

IN SENATE OF THE UNITED STATES.

JANUARY 14, 1852.

Ordered to be printed.

Mr. HAMLIN made the following

R E P O R T :

[Considered by unanimous consent and concurred in.]

The Committee on Commerce to which was referred the Preamble and Resolutions of the Legislature of the State of Michigan, asking for an appropriation for the construction of a ship canal around the falls of St. Marie, have had the same under consideration and have directed me to report :

That said work may be regarded as one of a national character, and one among the first, as entitled to the consideration of the Government, as connected with the extensive and important commerce of the lakes, as well as a work of a military character in a time of war, for the purpose of uniting and concentrating the naval forces upon the lakes. It has, however, heretofore been proposed by the Legislature of Michigan, to accomplish said work by a grant of land to said State for that object, and a bill for that purpose passed the Senate. Your committee are of opinion, that should Congress make an appropriation for that purpose, it may be more expedient to grant the lands asked for, with such restrictions and limitations as shall be necessary. Your committee therefore report the following resolution :

Resolved, That the Committee on Commerce be discharged from the further consideration of the subject.

Hamilton, printer.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1852.

Ordered to be printed.

Mr. DOWNS submitted the following

R E P O R T :

[To accompany bill S. 87.]

The Committee on Private Land Claims, made the following report on Senate bill S. 87, on the petition of the citizens of the parish of Colluma, praying a right of pre-emption.

At the last session of Congress a bill was passed giving the right of pre-emption to certain purchasers and settlers in the Maison Rouge grant in Louisiana, in the event that the Supreme Court of the United States should decide that the grant was not valid, and that the land belonged to them. It was intended by that bill, that a right of pre-emption should be extended to all the settlers on said claim, as well those who had purchased from the claimants, and cultivated and improved it, as those who had so improved and cultivated the land without having made such purchase; but it seems the Commissioner of the General Land Office has given a construction to the law which excludes those who had settled without purchase, on the ground that it was reserved land. To obviate this difficulty, and to carry out the intentions of the aforesaid bill, the committee report a bill which was referred to it, and recommend its passage.

Hamilton, *print.*

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1852.

Submitted, and ordered to be printed.

Mr. BRADBURY, from the Select Committee appointed on this subject, made the following

R E P O R T :

[To accompany bill S. No. 64.]

The Select Committee, to whom was referred "a bill to provide for the satisfaction of claims due certain American citizens, for spoliations committed on their commerce prior to the year eighteen hundred," and numerous memorials praying the passage of such bill, report :

That, after an attentive consideration of the important subject submitted to them, they believe the following positions to be established by unquestionable evidence :

1. Previous to the ratification of the convention of September 30th, 1800, numerous American citizens had just demands against the government of France, for property of the value of several millions of dollars, seized and confiscated under authority of that government, in violation of treaties and national law, for which France was bound to make indemnity to the sufferers.

2. These demands were recognised and insisted upon by our Government as *just*.

3. Their *justice* was acknowledged by France, who professed her readiness to make indemnity, and at the same time preferred claims of her own against the United States.

4. Our Government undertook the prosecution of these demands, invited the sufferers to forward their evidence, and pledged the public faith that proper proceedings should be adopted for their relief.

5. Our Government, in the ratification of the convention of September 30, 1800, cancelled these demands, and, in distinct terms, forever released and discharged France from all claims therefor.

6. Our Government obtained for this release a renunciation by France of claims of a national character, which she preferred against the United States, for which our negotiators had offered large sums of money, and the offers had been repeatedly rejected by the French authorities.

The claims of France which were thus purchased with the private claims of our citizens, rested, as was urged, on treaty obligations.

By the *Treaty of Alliance*, of February 6, 1778, the United States guaranteed to France, from that date forever, the then existing possessions of the crown of France, in America, as well as those it might acquire by the

future treaty of peace, in consideration of the invaluable guaranty by France to the United States, of their liberty, sovereignty and independence. This treaty had never been violated by France, and she had expended millions of dollars in the war it brought upon her.

The obligations resting upon the United States were great and embarrassing, as many of the possessions thus guarantied to France forever, had been conquered by the arms of Great Britain, and the residue were exposed to such conquest.

By the *treaty of amity and commerce* of the same date, each party stipulated to make its ports an asylum for the ships of war and prizes of the other party, and to exclude those of her enemies; and this stipulation, so essential to France in her contest with England, had been violated, as she alleged, by Jay's treaty, and our practice under it.

Without noticing in this brief analysis other provisions of these treaties, which were also subjects of controversy, or the consular convention of 1788, it is sufficient to say, that France claimed *damages for the non-fulfilment of the treaties, and a recognition of their continued existence.*

It is thus seen that immunity was purchased from national claims of a most embarrassing character, by the private claims of our citizens. It was the appropriation of private property for public use, for which, in the opinion of the committee, just compensation should be made.

These claims have so often been the subject of elaborate report, that the committee do not deem it necessary to go into a detail of the facts and arguments that constitute the basis on which they rest; and they would refer to the annexed report from the pen of that distinguished statesman and jurist, Edward Livingston, as a document presenting a fair and just view of the subject.

They annex also a schedule of the reports that have been made from time to time, by committees of the Senate and House of Representatives, on this subject. The claimants believe that no one will reject such an accumulation of authority as they afford, unless a thorough personal examination shall leave the conviction that the result of these numerous investigations, as well as the opinions of Madison, Marshall, and Monroe, is founded in error.

The committee report back the bill which was referred to them, and recommend its passage.

ABSTRACT.

In the House of Representatives there have been presented no less than fifteen reports, as follows :

No. of report.	When made.	By whom made.
1	2d session, 7th Congress.....	Mr. Giles, select committee.
2	2d...do...9th...do.....	Marion....do.
3	1st...do...17th...do.....	Russell, Committee on Foreign Affairs.
4	1st...do...18th...do.....	Forsyth.....do.
5	1st...do...20th...do.....	Edward Everett....do.
6	2d...do...20th...do.....	Do.....do.
7	2d...do...23d...do.....	Do.....do.
8	2d...do...25th...do.....	Howard.....do.
9	1st...do...26th...do.....	Cushing.....do.
10	2d...do...27th...do.....	Do.....do.
11	3d...do...27th...do.....	Do.....do.
12	1st...do...28th...do.....	C. J. Ingersoll....do.
13	1st...do...29th...do.....	Truman Smith.....do. (verbal.)
14	1st...do...30th...do.....	Do.....do....do.
15	1st...do...31st...do.....	Buel.....do.

In the Senate the subject has undergone an investigation by the committees thereof, in a manner equally elaborate, and reports have from time to time been submitted to this body, as follows :

No. of report.	When made.	By whom made.
1	1st session, 15th Congress....	Mr. Roberts, Committee of Claims.
2	2d...do...19th...do.....	Holmes, select committee.
3	1st...do...20th...do.....	Chambers.....do.
4	2d...do...20th...do.....	Do.....do.
5	1st...do...21st...do.....	Livingston....do.
6	2d...do...21st...do.....	Do.....do.
7	1st...do...22d...do.....	Wilkins.....do.
8	2d...do...22d...do.....	Do.....do.
9	2d...do...23d...do.....	Webster.....do.
10	2d...do...27th...do.....	Choate, Committee on Foreign Relations.
11	3d...do...27th...do.....	Archer.....do.
12	1st...do...28th...do.....	Choate.....do.
13	2d...do...28th...do.....	Do.....do.
14	1st...do...29th...do.....	Clayton, select committee.
15	2d...do...29th...do.....	Morehead.....do.
16	1st...do...31st...do.....	Truman Smith...do.

It is a remarkable fact, that there has not been a report adverse to these claims in either house of Congress since the President laid before the Senate, by message of May 20, 1826, the correspondence between the United States and France, relative to these claims. Prior to that disclosure, three adverse reports were made, to wit : one in the Senate, by Mr. Roberts, from the Committee of Claims, in 1819; and two in the House of Representatives, from the Committee on Foreign Affairs—the first by Mr.

Russell, in 1822, and the other by Mr. Forsyth, in 1824; all of which were far from being positive in opposition to their justice. Under such circumstances, it is a matter of surprise that these claims have not before been settled and paid; yet those who know from experience and observation the difficulties of securing *final* action in both houses of Congress, can well understand how it is that so many years have been allowed to roll over these claims without payment. But few, perhaps, have had time and opportunity to give them that investigation which is necessary for a full understanding of their merits. Bills providing for their payment have generally come up for consideration at a late period in the session, and for want of time received no *final* action. They have seldom been voted on by Congress, and no bill has ever been defeated on its final passage in either house.

IN SENATE—January 14, 1831.

The Committee to which was referred the petition of George F. Laroche and others, report :

That, referring to the report made at the last session of the Senate, for the statement of the case of the petitioners, they are of opinion that the relief pointed out for them in that report be granted to them, and for that purpose they beg leave to bring in a bill.

FEBRUARY 22, 1830.

The Committee to which was referred the petition of Francis R. Glavery and others, sufferers by French spoliations prior to the 30th September, 1800, report :

That the claims of this class of petitioners have so frequently been before Congress, and the public, as to render the details of this case in a great manner unnecessary; but the committee do not think that the duty assigned to them by the Senate would be properly performed by a mere reference to the several instructive reports that have been made on the subject for the information of either branch of the legislature. They have thought that something further was expected by the reference; and as the collection of documents had been previously made by former committees, that it would be required from them to place in a condensed view before the Senate, as well the history as the merits of the claim, and the reasoning by which the committee arrive at the conclusion to which they have come—that it is one founded in justice, and consequently, that those who make it are, according to true policy, entitled to relief.

The history of this claim runs back to the earliest period of our political existence as a nation; it grows out of the first act of our intercourse with foreign powers; and is interwoven with some of the most interesting events of our contest for independence, and the scarcely less arduous struggle to maintain our peace and neutrality, during the destructive warfare in which all Europe was soon after involved—a war in which principles, before held sacred among

civilized nations, were alternately disregarded by both the great parties to the contest.

One of our first objects, after the Declaration of Independence, was to strengthen our yet untried force by some foreign aid. The great and almost perpetual enemy of England, naturally presented itself to our statesmen as the power with which our object could be most probably and most effectually obtained, and an agent was almost immediately appointed to discover the disposition of the French court towards us; and on finding it favorable, commissioners were sent with full power to negotiate, with instructions "that, should the proposals already made be insufficient to produce the proposed declaration of war, and the commissioners are convinced that it cannot be otherwise accomplished, they assure his Most Christian Majesty that such of the British West India islands as, in the course of the war, shall be reduced by the united force of France and the United States, shall be yielded in absolute property to his Most Christian Majesty, and the United States engage, on timely notice, to furnish at their expense, and deliver at some convenient port or ports in the said United States, provisions for carrying on expeditions against the said islands, to the amount of two millions of dollars, and six frigates, mounting not less than twenty-four guns each, manned and fitted for sea; and to render any other assistance which may be in their power, as becomes good allies."

The result is matter of history, too well known to be enlarged upon. The treaties of alliance and commerce were entered into in the year 1778, and were followed by the consular convention, first planned by Congress in the year 1782, and sent out to Dr. Franklin, to be proposed to the French Government; agreed to, and signed, in the year 1784; refused to be ratified by Congress, and re-modelled in the year 1788; and finally ratified by the President, with the advice and consent of the Senate, in July, 1789. But some of the articles of these compacts belong to the subject before us, and must therefore claim particular attention. The powerful aid of France could not reasonably be expected without some equivalent. The basis of the treaty of alliance, then, was not only a stipulation for mutual aid and exertion in the war which that treaty rendered inevitable between France and England, and which stipulations are contained in the first ten articles of the instrument, but by the eleventh article, the United States guaranty **FOR EVER**, against all other powers, to France, as well all the possessions it then had in America, as those it might acquire by the treaty of peace. France guaranties to the United States their **LIBERTY, SOVEREIGNTY, and INDEPENDENCE**, absolute and unlimited, as well in matters of government as commerce, and all their possessions, as well as those they might acquire by the war. And the *casus fœderis*, as explained in the twelfth article, is made to depend, not upon the character of future war as to offensive or defensive, but "*in case of a rupture between France and England;*" and such a rupture was, by France, as confidently calculated to take place, as it was earnestly desired by the United States.

The rights and obligations of the two parties under this article need no explanations to elucidate them; and if the aid of France was considered necessary for the preservation of that which she guarantied to us, our stipulation (supposing our power equally necessary to France) bore no proportion in importance to hers. Liberty, sovereignty, independence, political and commercial, all our vast possessions, in the one scale; the West India colonies in the other. If the relative importance of the objects guarantied

to the respective parties to the contract was greatly disproportioned, the means of performing the engagement were not less so. On the one hand, the fleets, armies and resources of a powerful long established kingdom; on the other, a people whose very political existence was yet a problem—without regular armies, without revenue, with an inefficient government newly and rudely organized, and with a few privateers for a fleet. There was also this essential difference in the value of the stipulations, that France could never expect any thing from ours, until she had completely performed hers. These features in the treaty of alliance are necessarily adverted to: they have a forcible bearing on the case.

On the same day a treaty of amity and commerce was signed between the two nations, the articles of which here necessary to notice are the sixth, seventh, thirteenth, seventeenth, nineteenth, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-seventh and twenty-eighth. By them it was mutually stipulated that vessels of war belonging to the one power shall give convoy to, and defend and protect, the merchantmen of the other, going the same route, in the same manner as they ought to defend and protect liberty of commerce with an enemy's port, with all articles, except their own; that free ships shall make free goods; that there shall be pering contraband; that articles of contraband shall be restricted to the list contained in the treaty; that the right of search shall consist only in an inspection of the ship's papers, the tenor of which is set forth in the treaty; that even in case of contraband articles being found, their forfeiture shall not affect the ship, or the rest of the cargo; that such articles are not to be taken out before condemnation, without consent. Ships-of-war and privateers of the one power, with their prizes, are to be received into the ports of the other, and allowed to depart without paying any duties; but no shelter is to be given to vessels of the enemy, having made prize of the property of such power, who shall be forced, if they come in by stress of weather, to depart as soon as possible. A ship or privateer of an enemy of one power shall not be permitted to refit in the ports of the other, nor to sell their prizes; and shall not even be permitted to take provisions, except what may be necessary to carry them to the next port of their own nation. By this treaty it is also provided, that the functions of consuls shall be regulated by a particular agreement. This last stipulation was carried into effect by the consular convention above referred to, by which, in addition to the usual functions belonging to the consular office, exclusive jurisdiction was vested in the consuls over the vessels and crews of their nation in the United States; and arrangements were made on that subject which were found in practice to be extremely embarrassing.

With the mutual rights and obligations resulting from these stipulations, the parties to them were found on the breaking out of the war of the French revolution. The most important of them—the guarantee of our liberty, sovereignty and independence—had been fulfilled in a manner that called forth, on numerous occasions, the warmest expressions of gratitude from the Government of the United States; and that rendered the obligation to support them, in future entirely nugatory. No occasion had yet presented itself to ask for the performance of our engagements, or to call upon France for a compliance with those which could only be required in a belligerent state on her part and a neutral one on ours.

The occasion and the time had now arrived when the good faith of the two nations was to be put to the test. France became engaged in a war,

waged against her on extraordinary principles, and conducted in some respects in a manner subversive of those by which civilized nations, in modern times, had considered themselves bound, both towards their enemies and others. The United States were no party to that war; they were entitled to expect the strict performance of the engagement which had been made in anticipation of such a state of things, and which their neutral position gave them, according to the laws of nations, a right to demand. But they had had obligations to fulfil, as well as rights to assert. The *casus fœderis* had arrived; the French American islands were threatened, and we had guarantied their possession to France. The good faith, and even enthusiastic zeal, with which, when our situations were reversed, when the independence which France had guarantied to us was in danger, her part of the compact had been performed, rendered the duty more obligatory upon us. The stipulations we had made for the admission of French public and private vessels of war into our ports, and for the exclusion of those of enemies, were also a cause of great and constantly recurring embarrassment. With the very first operations of the war began the mutual complaints of the two parties, for the neglect of their duties and the infraction of their rights. One of our first complaints arose out of a decree passed by the French government on the 9th of May, 1793, which authorized the seizure of neutral vessels bound to enemies' ports, &c., with a promise of indemnity. The preamble of this decree declares that its character is to be attributed to the enemies of France, who, having captured neutral vessels bound to her ports, "the French people are no longer permitted to fulfil, towards the neutral powers in general, the vows they have so often manifested, and which they constantly make, for the full and entire liberty of commerce and navigation."

By the fifth article of this decree, its operation was made retrospective to the date of the declaration of war, and prospective to the period when the enemies of France should cease the depredations of which it complained.

Early in the year 1794, we complained of an embargo, by which our vessels were detained at Bordeaux; of refusals to pay bills drawn for supplies; of British goods taken from our ships, in violation of the treaty; of American property taken under pretext of its belonging to the English; of the imprisonment of American citizens taken on the high seas.

They complained of the President's proclamation (of neutrality) of the 22d of April, 1793, which they consider "*insidious*;" that we had restored to the British owners sundry prizes made by certain French privateers, and excluded said privateers from the use of the ports of the United States: that shelter was given to English vessels of war in our ports, while they (the French) were not permitted to sell their prizes; that supplies of provisions, and other supplies for the West Indies, which we had agreed to guaranty, were refused; that the consular convention was not carried into effect; and that our seamen were captured or impressed by British vessels-of-war, and used in great numbers as auxiliaries in the reduction of the French colonies. In all these complaints neither of the parties seemed desirous of pressing the other for a strict performance of the treaty—both, perhaps, from a consciousness that they were, themselves, not inclined to perform all its stipulations; we, on our part, were cautious about asking indemnity for the breach of the articles which stipulated that free ships should make free goods, in the hope that the French would be equally accommodating on the subject of the guarantee; and it is curious to observe the embarrassment which this subject produced in the negotiations between the parties. In the instructions to Mr.

Monroe, he is directed to state that *we are unable to give her aid of men and money*, evidently alluding to the guarantee. A plea of inability could only flow from a consciousness of obligation, and must be regarded as an acknowledgment of liability on the part of the nation that makes it. And that minister, in one of his letters to the Secretary of State, says: "I felt extremely embarrassed how to touch again their infringement of the treaty of commerce; whether to call on them to execute it, or leave that question on the ground on which I first placed it." And afterwards, in a conference with one of the French ministers, the question is directly put: "Do you insist on our executing the treaty?" This, Mr. Monroe, for the moment, evades; but it was afterwards peremptorily again urged, "Do you insist upon or demand it?" And Mr. Monroe answers, "that he was not instructed by the President to insist upon it, nor did he insist upon it;" and he avows that one of his motives was, "lest it might excite a disposition to *press us upon other points, on which it were better to avoid any discussion.*" On the part of the French government, although the execution of the guarantee seems to have been incidentally demanded by their agents in the United States, yet it was rather in the shape of a request of aid in money, provisions and arms; and the reference made to the guarantee was to show that we might comply with their requisitions under the previous treaty without departing from our neutrality.

The mildness with which we were approached on this subject, however, resulted from the many and intentional indications given out by the Executive, of our unwillingness to do any act which should make us subject to become parties to the war. And, referring to this circumstance, the biographer of the then Chief Magistrate says: "Washington's proclamation of neutrality was a novelty in the political world. It was, however, the wisest measure, as adapted to the circumstances, that history records. It accomplished the purpose for which it was intended, and that purpose was one of the best and most salutary of which any nation had ever experienced the benefit. It was intended to prevent the French minister from demanding the performance of the guarantee contained in the treaty of alliance, and it was admirably calculated to prepare the minds of the people for approving of the refusal which, if he made the demand, Washington was resolved to give him."

Soon after this proclamation was issued, the French minister proposed to renew the treaties, and unite still closer the two nations in their stipulations of alliance; and he did not hesitate to make known, as part of his instructions, that the saving of the guarantee article, in any new treaty to be made with the United States, was an indispensable condition.

It was of the more importance to her, as she could direct her whole force to her European wars, and leave the United States at all times to protect her islands, or pay for them if we failed to save them. It was in this view of the subject that the President of the United States subsequently, (July 15, 1797,) instructed his envoys to France, Messrs. Pinckney, Marshall, and Gerry, to stipulate with the French Government to pay to them an annual war subsidy of \$200,000, in lieu of the guarantee article—the engagement to be prospective from the date of the proposed stipulation.

There is, indeed, some evidence that Mr. Genet, during his ministry, was instructed to make, and did make, a formal demand of the performance of the guarantee; for, on the 14th of November, 1794, he writes thus to Mr. Jefferson: "I beg of you to lay upon the President the *decree and the en-*

closed note, and to obtain from him the earliest decision, either as to the *guarantee I have claimed the fulfilment of for our colonies*, or upon the mode of negotiation of the new treaty I was charged to propose to the United States, and which would make of the two nations but one family." Yet as, a few days after this, on the 2d December, the Secretary of State writes to Mr. Monroe, that France had *omitted* to demand the fulfilment of the guarantee, we must suppose that Mr. Genet's demand was not considered in that light by our Government.

In this state things remained—each party fearful of pressing, lest it should, in its turn, be pressed by the other; and mutual forbearance produced the effect which moderation and prudence lead to, in public as well as private affairs. The language of recrimination had nearly ceased, and every thing seemed to promise a speedy and satisfactory accommodation. After some difficulty, Mr. Monroe, on the 10th November, 1794, obtained from the French Government an *arrêté*, ordering an adjustment of the accounts of American citizens for the embargo at Bordeaux, for the supplies rendered to the Government of St. Domingo, by which all the embarrassments of our direct commerce with France, and with other countries, so far as they had been created by that power, were done away. "In short," says Mr. Monroe, "all the objects to which my note of the 3d of September extended, were yielded, except that of allowing our vessels to protect enemies' goods;" which last point was yielded on the 3d January, 1795. And, in a message to Congress of the 20th February following, the President says, "It affords me the highest pleasure to inform Congress that perfect harmony reigns between the two republics, (France and the United States,) and that those claims (of the American citizens) are in a train of being discussed with candor, and amicably adjusted."

During these discussions, which produced these prospects of amicable arrangement, the treaty between the United States and Great Britain had been negotiating. As was natural, it produced some jealousies and suspicions. But the solemn assurances which Mr. Monroe was instructed to make, that "the motives of Mr. Jay's mission were to obtain immediate compensation for our plundered property, and the restitution of the posts:" and that "he was positively forbidden to weaken the engagements between this country and France;" and the instruction he received, to "repel with firmness any imputation of the most distant intention to sacrifice our connexion with France to any connexion with England:"—all these contributed to produce the effect which has been described. When the terms of that treaty came to be known, the face of affairs was immediately changed. France complained that her interests were sacrificed by stipulations with her enemy, inconsistent with those we have made with her, in relation to the shelter to be given to ships of war; that we had enlarged, to her prejudice, the list of contraband, and even admitted that provisions might be such, at a time when her enemy was endeavoring to starve her. These, and other complaints, were urged with great acrimony. On our part, we asserted that the rights of France were reserved by an express article; and that, having done this, she had no right to complain of any treaty which, as an independent nation, we had a right to make. The construction which Great Britain put on the treaty, by capturing all our vessels she could find carrying provisions to France, increased the irritation: while the payment, in case of capture, which we had stipulated for, gave it, in their minds, the appearance of a collusive contract to their prejudice. France also com-

plained, and more seriously, of the new rules to which she was subjected in relation to her privateers and prizes, and which had their authority only in the British treaty of 1794.

From the following extract from a report made to the President by the Secretary of State, on the 15th of July, 1796, it appears that the restrictions we had laid upon French privateers and their prizes, were not the result of demand on the part of Great Britain, but our own voluntary construction of the stipulation made with her. "Mr. Adet asks whether the President has caused orders to be given to prevent the sale of prizes conducted into the ports of the United States by vessels of the republic, or by privateers armed under its authority." On this I have the honor to inform you, that the 24th article of the British treaty having explicitly forbidden the arming of privateers, and the selling of their prizes, in the ports of the United States, the Secretary of the Treasury prepared, as a matter of course, circular letters to the collectors to conform to the restrictions contained in that article. This was the more necessary, as, formerly, the collectors had been instructed to admit to an entry and sale of the prizes brought into our ports." This exclusion from our ports was the more severe against France as it amounted to nearly an entire exclusion from the Western hemisphere, since the French colonies had generally fallen into the possession of England.

It was alleged by France, that, while it was very important to her to secure ports of refuge and security for her ships of war, privateers and prizes, on or near the continent of America, principally for the protection of her sugar islands, yet, being anxious to throw her whole force into the scale of the United States, to obtain and secure their independence, she made their cause her sole object; but neither in this act, nor in the renunciation in favor of the United States of the Bermuda islands and the northern possessions of America, (should they be conquered,) did she lose sight of the protection of her valuable West India possessions. She had stipulated with the United States, in the treaty of commerce of 1778, for the use of their ports, for which they received an equivalent in the undivided aid of the French forces, and in the renunciation referred to. These charges produced recrimination, and a new era began in the political situation of the two countries, from which may be dated a large part of the claims on which the committee are directed to report.

At this period of the controversy, Mr. Monroe states that the demands of the United States arose—

1. From the capture and detention of about fifty vessels.
2. The detention, for a year, of eighty other vessels, under the Bordeaux embargo.
3. The non-payment of supplies to the West India islands, and to continental France.
4. For depredations committed on our commerce in the West Indies.

These last seem to have begun a short time prior to that date.

The same moderation in language that had preceded it was no longer to be found in the diplomatic intercourse between the nations. France complained loudly that British ships-of-war, which had made prize of their vessels, were not only received in our ports, but that they made them a place of rendezvous, whence to destroy their commerce, in direct violation of our treaty. They added to this cause of complaint the repetition of others to which the committee have before alluded, and reinforced them by new

allegations, perhaps not so well founded; and, at length, their minister, Mr. Adet, on the 15th of November, 1796, announces the order of his government to suspend his functions in the United States, and made a formal claim of the guarantee, in the following terms: "The undersigned, minister plenipotentiary of the French republic, now fulfils to the Secretary of State of the United States a painful but sacred duty. He claims, in the name of American honor, in the name of the faith of treaties, the execution of that contract which assured to the United States their existence, and which France regarded as the pledge of the most sacred union between two people, the freest on earth." Nor was this dissatisfaction confined to complaints and remonstrances. On the 7th July, 1796, the Directory decreed that "the flag of the French republic will treat all neutrals, either as to confiscation as to searches or capture, in the same manner as they shall suffer the English to treat them." This was followed by a notification, "that the Directory consider the stipulations of the treaty of 1778, which concern the neutrality of the flags, as altered and suspended in their most essential points by this act, (the treaty with Great Britain.)"

In the same year the agents of the French government in the West Indies issued decrees authorizing the capture of American vessels bound to, and coming from, an English port, under which, in practice, all Americans, wherever bound, were indiscriminately captured or plundered; and these proceedings are thus characterized by our Secretary of State in a letter to Mr. Pinckney: "The spoiliations on our commerce by French privateers are daily increasing in a manner to set every just principle at defiance." In the following year, 2d March, 1797, another decree of the Executive Directory was passed, enlarging the list of contraband, declaring Americans in the service of England pirates, and authorizing the capture of all vessels of the United States unprovided with a document called the *role d'équipage*, which it was well known no American vessel ever carried. This decree was made to have immediate operation, evidently to take us by surprise; and its effect was so truly calculated, that the ocean was swept of several hundreds of American vessels before intelligence of the enactment of the decrees had reached the United States. In the month of January, 1798, all vessels having on board goods, the production of England or any of its colonies, were declared good prize. These decrees, and others of a similar character, readily and promptly executed, and even exceeded by the cupidity of the French cruizers, produced a state of things which could not long be submitted to. The United States at first attempted to put an end to it by negotiation; this was rendered nugatory—first, by the refusal to receive Mr. Pinckney as the successor to Mr. Monroe; and afterwards by the same refusal, accompanied by very insulting circumstances, to the extraordinary mission composed of Messrs. Pinckney, Marshall and Gerry. From this time affairs took a more serious turn. A number of legislative acts were passed evincive of the indignant feeling which the course of conduct pursued by the French government had produced, and showing a determination to resist them by force. Of these, the committee deem it necessary to the present investigation to notice only the following:

Act of 28th May, 1798, authorizing the capture by public vessels of the United States of "all armed vessels of the republic of France which have committed, or shall be found hovering on the coast of the United States for the purpose of committing, depredations on the vessels belonging to the citizens thereof."

Act of 18th June, 1798, suspending intercourse with France, under penalty of the forfeiture of vessels carrying on such intercourse.

Act of 25th June, same year, authorizing American merchant vessels to oppose searches, &c., made by French vessels, to capture the aggressors, and to recapture American vessels taken by the French; but with proviso that, "whenever the government of France, and all persons acting by or under their authority, shall disavow, and shall cause the commanders and crews of all French armed vessels to refrain from, the lawless depredations and outrages hitherto encouraged and authorized by that government against the merchant vessels of the United States, and shall cause the laws of nations to be observed by the said French armed vessels, the President of the United States is hereby authorized to instruct the commanders and crews of the merchant vessels of the United States to submit to any regular search by the commanders or crews of French vessels, and to refrain from any force or capture to be exercised by virtue thereof."

The act of 28th June, 1798, declaring the condemnation and sale of French vessels, taken in pursuance of the act of 28th May.

The act of 7th July, 1798, declaring for the reasons* recited in the preamble "That the United States are of right freed and exonerated from the stipulations of the treaties, and of the convention, heretofore concluded between the United States and France; and that the same shall not henceforth be regarded as legally obligatory on the Government, or the citizens of the United States."

The act of the 9th July, in the same year, authorizing the public vessels of the United States to capture all armed vessels of the republic of France on the high seas, and giving authority to the President to issue commissions for the like purpose to private armed vessels.

These several acts are here referred to, merely as facts necessary to be considered in the history of the transactions between the two countries; their particular character and bearing upon the claim of the petitioners will be hereafter more properly considered. Their effect seems to have been important in bringing the Government of France to more moderate and pacific counsels; some symptoms of which were tardily shown by a previous attempt to open a negotiation with Mr. Gerry. Advances were made through our minister at the Hague, which ended in a second mission, composed of Messrs. Ellsworth, Davy, and Murray, who arrived in Paris on the 2d March, 1800, and immediately began a negotiation, which ended in the convention of 30th September, 1800. The second and fifth articles only of this convention have a direct bearing on the claims of the petitioners. They are in the following words: "The ministers plenipotentiary of the two parties, not being able to agree, at present, respecting the treaty of alliance of the 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time: and, *until they may have agreed* on these points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows:

"Article 5. The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid, or the payment may be prosecuted in the same

manner as if there had been no misunderstanding between the two States. But this clause shall not extend to indemnities claimed on account of captures or confiscations."

The 2d article was a temporary expedient to restore the two countries to a state of mutual intercourse, from the interruption of which both had experienced great inconvenience. By it, the claims of both countries were acknowledged, and the Governments respectively bound to negotiate further upon them at a future period; ours for indemnity to our citizens, for depredations on their commerce, and injury to their persons; theirs for the non-execution of the treaties of alliance and commerce, and the breach of the consular convention. This treaty, soon after its date, was ratified by the First Consul; but the further negotiation provided for by the 2d article on these important points was defeated by a subsequent occurrence. The convention, duly ratified by the French Government, was transmitted to the President, and by him submitted to the Senate, who advised its ratification, with the exception of the 2d article, and a limitation of its duration to the term of eight years. With these alterations the treaty was returned, and again submitted to the French Government, which, after some delay, and much deliberation, ratified the convention, with these alterations, adding on their part this proviso: "*Provided, that, by this retrenchment, the two States renounce the respective pretensions which are the subject of the said article.*" The convention, with this modification, was again submitted to the Senate, who, on the 19th of December, 1801, resolved, two-thirds concurring, that they consider the said convention as fully ratified; and they returned the same to the President for promulgation, who proclaimed it in the usual form.

It is on these proceedings that the petitioners found their claim; their reasoning is this, and it seems to bring the merits of their case within a very narrow compass:

As citizens of the United States, we had rights, which France, as a friendly power, was bound by the law of nations to respect. We had other rights, which were secured to us by a positive compact between France and the United States. These rights, of both descriptions, having been violated by the former power, greatly to our pecuniary injury, our first application was to the justice of the aggressors. Finding this unavailing, we complained to our natural and sworn protectors, the Government of the United States, who promptly volunteered its agency for the recovery of indemnification. The claimants were notified, by a circular letter from the Secretary of State, dated August 27, 1793, "that due attention will be paid to any injuries they may sustain on the high seas, or in foreign countries, contrary to the law of nations, or to existing treaties; and that, on their forwarding hither well authenticated evidence of the same, proper proceedings will be adopted for their relief;" and, in pursuance of said invitation, the sufferers generally forwarded evidence of the losses to the Department of State. The United States urged the justice of our claims, which was not denied by France. But that Government had counter claims—not against us, the injured claimants, either collectively or individually, but against the whole nation, of which we are a part—counter claims, not urged as representing French citizens for individual injuries, but national claims of indemnity for alleged breaches of national engagements, and involving a right to call for the future performance of onerous engagements. Pressed by the fears of

being called on for the execution of those engagements, and for the losses incurred by France by reason of their past inexecution, our Government not only failed in making that firm and vigorous demand of justice, that, under other circumstances, they would have made, but bartered the indemnity that was due to us for their own exoneration, from dangerous and inconvenient engagements. As our attorneys they gave a release of our private claims, in consideration of a similar release of their national stipulations; they purchased a great public advantage at our expense. We are not disposed to contest the right which has been exercised; but we invoke the eternal principles of justice, enforced as they are by a constitutional provision, when we allege that private property shall not be taken for public use without full indemnity.

Although your committee cannot but feel the full force of this appeal to the justice of the country, yet, as it has frequently been made in vain, they deem it a duty briefly to examine the reasons which, at different times, have been urged against the allowance of the claim. Among these, they do not recollect that the justice of the claims against France has ever been denied. Should a doubt, however, on that ground, suggest itself to any member of the Senate, it will be removed by the slightest attention to the acts of our Government, legislative, executive, and diplomatic. The laws, which have before been referred to; the orders given by the President to carry them into effect; and at earlier as well as subsequent periods, the instructions to our ministers, and their correspondence, all prove that the wrongs inflicted on the petitioners were of the most grievous kind. A single reference will be sufficient on this point. It is to a report made by the Secretary of State, respecting depredations on the commerce of the United States, dated 21st June, 1797, and published, page 407 of the documents sent to Congress on the 20th May, 1826. After enumerating the several injurious decrees passed by the French government, he says: "Besides these several decrees, and others, which, being more limited, the former have superseded, the old marine ordinances of France have been revived, and enforced with severity, both in Europe and the West Indies. The want of, or informality in, a bill of lading; the want of a certified list of the passengers and crew; the supercargo being by birth a foreigner, although a naturalized citizen of the United States; the destruction of a paper of any kind soever, and the want of a sea letter, have been deemed sufficient to warrant a condemnation of American property, although the proofs of the property were indubitable. The West Indies, as before remarked, have exhibited the most lamentable scenes of depredation, &c. The persons of our citizens have been beaten, insulted, and cruelly imprisoned. American property, going to, or coming from, neutral or even French ports, has been seized; it has even been forcibly taken when in their own ports, without any other excuse than that they wanted it." To deny the justice of claims for indemnity for such excesses, would be the assertion of a right, on the part of France, to indiscriminate plunder of neutral property. The claim then existed against France; whether acknowledged by that power or not, cannot, in the view the committee take of the case, be material. If founded on justice, we are bound to suppose that, at some time or other, it would be allowed. Nations must not, in their intercourse with each other, be supposed capable of flagrant injustice. Such a principle would soon break all those ties by which modern civilization has united them. If the French government at that period had denied the justice of these claims, and asserted a right to

make the depredation, it would not have lessened the justice and validity of the claimants' right against the successors in power of those who were so regardless of the laws of nations and the faith of treaties; and at this moment, but for the act of their own government, they might appeal from the wrongs inflicted by republican France, to the justice and magnanimity of its monarchical ruler. But the justice of the claim was not denied; and the necessity of providing indemnity was expressly acknowledged. Of this there is the fullest evidence. By an *arrêté* of the 18th November, 1794, the commissioner of the marine is ordered to adjust the accounts of American citizens for the embargo at Bordeaux; and the injustice of all the preceding decrees against our commerce is virtually acknowledged by their unconditional repeal. Under this decree, indemnity was made for sundry American claims arising out of the Bordeaux embargo, contracts, &c.; and the residue of claims of that description were, with some exceptions, compensated out of the fund provided by the convention of April 30, 1803, between the United States and France. Even when Messrs. Pinckney, Marshall, and Gerry, were in Paris, in the informal negotiations carried on there, the justice of the claims was admitted, and a commission proposed to be established to liquidate the amount to be paid by the United States as a loan to France. (See exhibit A, in the despatch of the envoys of November 8, 1797.) In all the subsequent negotiations, these claims for spoiliations were admitted to be valid; and finally, in the second article of the convention, are spoken of as *indemnities due*. We have also the authority of our Government for this assertion. Mr. Madison, in a letter to Mr. Pinckney, dated February 6, 1804, says expressly: "The claims from which France was released were *admitted by France*;" so that the claims rest, not only on their intrinsic justice, but on the express admission of it by the party concerned.

How far the obligation of a government to enforce the just claims of its citizens against a foreign power extends, has, it is understood, been sometimes discussed, in considering the case of these petitioners; but it is believed that there is no connexion between that principle and this case. The demand for indemnity does not rest on any failure on the part of the Government to assert the rights of the claimants, but on its appropriation of them to its own use.

The objection most frequently urged, and which, therefore, received the greatest attention from the committee, is, that the depredations on which the claims are founded were the cause of a war with the nation which had committed them; and that, this last argument of nations having failed to produce its effect, the treaty which put an end to the war also cancelled the claims which were the cause of it.

Admitting the two positions—that a nation is not obliged to go to war to enforce the claims of its citizens against a foreign power; and that, if it should resort to that measure, a treaty of peace, not containing any provision for the allowance of such claims, would not give to the individuals a right to claim indemnity from their own government—admitting both these positions, the committee cannot see how either of them bears upon the case.

National claims for indemnity may be reasonably supposed to be abandoned by a treaty of peace which makes no provision for them, because such treaty is considered as an adjustment of all national difference; and where a refusal to compensate injuries to individuals is the ostensible cause of the war, it is made a national claim, and would, in like manner, be extin-

guished by a peace; and no right would result to the injured party against his own government for indemnity. But if, in an uncontroverted case of war, the government which had offered the injury should, by the treaty of peace, acknowledge the right of the individual to an indemnity, and his own government should release it in consideration of some advantage given to it in the treaty, surely there could be no doubt that the individual whose rights were thus bartered would be entitled to compensation.

But this was not a case of war, and the stipulations which reconciled the two nations was not a treaty of peace; it was a convention for putting an end to certain differences, &c. The proof of these assertions will be evident to any one who pays the slightest attention to the history of the transaction.

The first public expression of the light in which our Government considered the measures which have been detailed, is in the instructions given to Messrs. Ellsworth, Davy, and Murray, in which the envoys are told, after an enumeration of the wrongs sustained by the acts of the French Government, "*This conduct of the French republic would well have justified an immediate declaration of war on the part of the United States; but, desirous of maintaining peace, and still willing to leave open the door of reconciliation with France, the United States contented themselves with preparing for defence, and measures calculated to defend her commerce.*" Now, all the measures which have been considered as equivalent to a state of war had been taken previous to the date of these instructions. Our Government then did not think the two nations in a state of war; and, in conformity with these instructions, the ministers, in one of their first communications in the negotiation, thus characterize the measures taken by the United States: "With respect to the acts of the Congress of the United States, which the hard alternative of abandoning their commerce to ruin imposed, and which, far from contemplating a co-operation with the enemies of the republic, *did not even authorize reprisals on their merchantmen, but were restricted solely to the giving safety to their own, till a moment should arrive when their sufferings could be heard and redressed.*"

The same character is impressed on the whole negotiation—the settlement of indemnities for mutual injuries, and the modification of the ancient treaties, to suit existing circumstances. Nowhere the slightest expression, on either side, that a state of war existed, which would exonerate either party from the obligation of making those indemnities to the other. On the contrary, when it became necessary to urge that those treaties were no longer obligatory on the United States, the ministers rely not on a state of war, which would have put an end to them without any dispute, but on the act of Congress of the 7th July, 1798, annulling the treaties—an act which they themselves did not think, in a subsequent part of the negotiation, any bar to a recognition of the treaties, so as to limit the operation of an intermediate one made with England. The convention which was the result of these negotiations is not only, in its form, different from a treaty of peace, but it contains stipulations which would be disgraceful to our country on the supposition that it terminated a state of war—the restoration of prizes, and payment for vessels destroyed. Neither party considered then that they were in a state of war. Were they so in effect? War, from its nature, is indiscriminate hostility between the subjects of the belligerent powers. Hence it is universally acknowledged that the granting of letters-of-marque and reprisal does not produce a state of war, because it is limited. Here

recourse was not even had to this measure ; the right of capture was limited to that of armed vessels, which were dangerous to our commerce—looking to security for the future, but not to indemnity for the past. Besides, the convention was not a treaty of peace, because such a treaty is without limitation ; while the convention, being limited to eight years, would, if we had been at war, have been a truce only for that period, at the expiration of which war must have been resumed, as of course, or been followed by a regular treaty of peace. The committee will not swell their report by references to authorities which support these principles, which they hold to be generally acknowledged.

Suggestions also have been made, invalidating these claims on the ground that they were not made the equivalent for the release of the obligations incurred by the United States under the treaties with France, all of these obligations being already destroyed by the act of Congress of 7th July, 1798, and one of them for the guarantee of the islands never having been incurred, because the war on the part of France was an offensive, not a defensive war ; and that, therefore, the *casus fœderis* had never occurred.

On the first ground, it will be sufficient to observe, that a treaty being an agreement between two or more parties, no one of them can exonerate himself from his obligation by his own act. On the second, that the fact is for the argument worse than doubtful, and that if it were well established, the public law is by no means clear ; and that one or all of these reasons operated on our envoys to propose a sum of money as a consideration for exonerating us from the obligation of their treaties, thus supposed by the argument to be annulled.

Those who urge such objections overlook the essential fact, not only that nearly all the claims originated prior to the date of the annulling act of Congress of the 7th July, 1798, but that they were generally valid claims against France under the general provisions of international law, and therefore derived little or no aid from treaty stipulations. It was for this reason that the French government refused to ratify the convention of 1800, with our unconditional omission of the second article ; since they would thereby have lost their claims to treaties, and left themselves still responsible for the claims under consideration, in virtue of international law.

That the final result of the negotiation was the abandonment of the private claims, as a consideration for exonerating the United States from the national obligations imposed by the treaties and conventions with France, is abundantly obvious. These were the only objects of the second article. These had been, from the beginning to the end of the negotiation, the two objects of counter claim. The difficulty of adjusting them led to the expedient, provided by that article, of adjourning the discussion. It was declared by one party, and solemnly acknowledged by the other, that they were mutually released ; and, finally, it has been repeatedly stated by the agents of our Government, that the one was given up as an equivalent for the other. Mr. Madison, in his letter to Mr. Pinkney, before referred to, says, expressly : "The claims from which France was released were admitted by France, and the release was for a valuable consideration in a correspondent release of the United States from certain claims on them ;" and before the convention was ratified, Mr. Livingston, our minister in France, writes : "France is greatly interested in our guarantee of their islands, particularly since the changes that have taken place there. I do not, therefore, wonder at the delay of the ratification ; nor should I be surprised if she consents to pur-

chase it by the restoration of the captured vessels." These proofs might be greatly multiplied ; but the committee think it is sufficiently shown that the claim for indemnities was surrendered as an equivalent for the discharge of the United States from its heavy national obligations, and for the damages that were due for their preceding non-performance of them. If so, can there be a doubt, independent of the constitutional provision, that the sufferers are entitled to indemnity ? Under that provision, is not this right converted into one that we are under the most solemn obligation to satisfy ?

The only remaining inquiry is the amount ; and on this point the committee have had some difficulty. Two modes of measuring the compensation suggested themselves :

1. The actual loss sustained by the petitioners ;
2. The value of the advantages received, as the consideration, by the United States.

The first is the one demanded by strict justice ; and is the only one that satisfies the word used by the Constitution, which requires "just compensation," which cannot be said to have been made when any thing less than the full value is given. But there were difficulties which appeared insurmountable, to the adoption of this rule at the present day, arising from the multiplicity of the claims, the nature of the depredations which occasioned them, the loss of documents, either by the lapse of time, or the wilful destruction of them by the depredators. The committee, therefore, could not undertake to provide a specific relief for each of the petitioners. But they have recommended the institution of a board, to enter into the investigation, and apportion a sum which the committee have recommended to be appropriated, *pro rata*, among the several claimants.

The committee could not believe that the amount of compensation to the sufferers should be calculated by the advantages secured to the United States, because it was not, according to their ideas, the true measure. If the property of an individual be taken for public use, and the Government miscalculate, and find that the object to which they have applied it has been injurious rather than beneficial, the value of the property is still due to the owner, who ought not to suffer for the false speculations which have been made. A turnpike or canal may be very unproductive ; but the owner of the land which has been taken for its construction is not the less entitled to its value. On the other hand, he can have no manner of right to more than the value of his property, be the object to which it has been applied ever so beneficial. In the present case, the committee are of opinion that it would drain the treasury, were they to give the petitioners the value of obligations which the sacrifice of their property purchased.

The committee are led to believe that a less appropriation than five millions of dollars would be doing very inadequate justice to the claimants ; they therefore recommend the insertion of that sum in the bill which they pray leave to bring in for the relief of the petitioners.

To lessen the public expenditure is a great legislative duty ; to lessen it at the expense of justice, public faith, and constitutional right, would be a crime. Conceiving that all these require that relief should be granted to the petitioners, they pray leave to bring in a bill for that purpose.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1852.

Ordered to be printed.

VIEWS OF THE MINORITY.

Mr. FELCH submitted the following

REPORT:

The subject-matter of this claim has long been before Congress, and the large amount proposed to be appropriated to the memorialists, the important principle involved in the bill, and the great mass of documents to which reference must be had in order to understand the merits of the application, give unusual importance to the matter. A minority of the committee, unable to concur in the favorable view taken by the majority, deem it their duty to refer to the reasons of their dissent. They find the principal facts, however, so well collated, and the reasons against the claim so well presented in the views of the minority of the committee to whom the subject was referred in the Senate, in 1850, that they regard a reference to that document sufficient for their purpose. Concurring, in the main, in the views therein presented, and convinced of the correctness of the conclusion, they hereto annex the same.

IN SENATE—February 5, 1850.

Mr. HUNTER, from the select committee to which were referred the memorials of sundry citizens of the United States, asking indemnity for spoliations by the French prior to the thirty-first of July, 1801, submitted the following, as the views of the minority of that committee:

These claims, which have been so often presented to the consideration of Congress, are for indemnity for depredations committed by the French on our commerce from 1793 to 1800. These spoliations were made during a part of the time of those long wars growing out of the French revolution, which was a period of golden harvests to our commerce, and gave it a development almost unexampled for its extent and rapidity in the history of nations. Whilst we enjoyed immense advantages in the carrying trade, which our position as neutrals enabled us to conduct, our commerce was subjected to risks which it would have escaped in time of peace. Amongst these were the temptations to spoliations upon our commerce, arising out of the state of war, and from the exasperated state of feeling between France

and Great Britain, which too often made them forget the rights of neutrals in their desire to strike at each other. The claims of our citizens for indemnity for their losses were long the subject of controversy between the governments of the United States and France, until all negotiation, as to a part of them, was abandoned by the two governments. Since that time they have been presented as legitimate demands upon this government, but without success, during a period of nearly fifty years. It remains to be seen whether these claimants will now be more successful. If the debt be really due to them it ought to be paid, although it will, doubtless, be considered as unfortunate for the reputation of the country, that it should be thus convicted of having refused justice to its citizens for nearly fifty years. Still more unfortunate will it be for that reputation if these claims are established upon arguments which shall convict our government of a deliberate violation of obligations incurred under the solemnity of a treaty to its ancient ally, and which place it in the wrong, in its relations towards France during the earlier administrations of its affairs. But the claims of justice are imperative, and higher even than the character of our government, or of its early administrations, for probity and fair dealing. Should the justice of the claims be clearly established, we ought to satisfy them even at this expense. But claims of this character certainly require investigation before we make such admissions as these. They rest upon the ground that France had claims upon us under her treaty of 1778, and the consular convention of 1788, which she renounced, in consideration of our abandoning all claim for indemnities for losses sustained by our citizens. It is maintained that the United States, by that act, incurred an implied obligation to pay those claims, as they had thus converted them to a public use and obtained a valuable consideration for them from France. To sustain this position, it is maintained by the claimants that the treaties of 1778 and 1788, between the United States and France, were in force in September, 1800, although our government in 1798 had declared them to be annulled through the misconduct of France; that there was an obligation on our government to press these claims even to war, or to pay them itself; and that, having failed to discharge their duty in the first particular towards these claimants, it is now bound to pay them the debt. How far are these propositions true, and can they be sustained to such an extent as to justify the demand? To examine the first proposition, it may be necessary to review, briefly, the history of the time, so far as it may affect the obligation of these treaties. The treaty of 1778 established a defensive alliance between the two countries, and also provided that free ships should make free goods; thus enlarging the privileges, as to the carrying trade, which the United States would enjoy as neutrals, beyond what could at that day be claimed under the law of nations. There were also certain provisions as to the rights of privateers to bring in prizes, and as to the right of consuls to jurisdiction in the respective countries, as given in the convention of 1788, which became the subject of dispute between the two nations. The 22d article of the treaty of 1778 provided that no nation, at enmity with either the United States or France, should fit out privateers in the ports of either the United States or France. This denial of the right to other nations to fit out privateers in our ports against France, was treated as an implied obligation to permit France to fit out privateers in the United States against nations with whom we were at peace; and that, too, in the absence of any express article to that effect, and with a full knowledge that it would have been a violation of our

obligations as neutrals towards Great Britain. The denial of this monstrous assumption was one of the causes of complaint, on the part of France, against our government for a violation of the treaty. Can it be necessary to argue such a proposition? The next subject of complaint was our denial of the right of the French privateers to sell their prizes, *duty free*, in our ports. They claimed the right under the 17th article of the treaty of 1778, which allowed their ships to bring their prizes into our ports and carry them whithersoever they pleased. The refusal of our government to permit them to sell their prizes, free of duty, was treated by them as a violation of our obligations under the treaty, upon no better ground than that the right to bring in prizes and carry them whithersoever they pleased, implied the right to sell these prizes, free of duty, within our ports. Surely it cannot be necessary to argue such a proposition as this.

Another subject of complaint on the part of the French was, that their consuls were not allowed to decide, *within the United States*, whether vessels taken by their cruisers were lawful prizes or not; thus claiming for them admiralty jurisdiction within the United States. This demand was founded on the 8th article of the consular convention of 1788, which gave these consuls the right to try civil disputes and matters arising in their own ships; but the article especially stipulates that their functions are to be confined to the "interior of the ship." The cases were to arise "in vessels of the respective nations," and the functions of the consuls to be confined, as above stated, to the interior of the ship. How this could give them the right to try prize cases affecting the rights of other nations, it is difficult to perceive. Another subject of complaint arising out of the same article was, a failure on our part to furnish, by legislation, to these consuls, the necessary means to execute their judgments. (See No. 68, vol. 5, p. 131, Senate Docs. 1st sess. 19th Congress—in relation to French spoiliations.*) But it was admitted by themselves that the consular convention had made no such express stipulation. The chief offence and great subject of complaint was the treaty between the United States and Great Britain, commonly known as Jay's treaty. This treaty, which defined what should be considered contraband between the two nations, according to the law of nations, as it was then understood, was less liberal towards our trade than the treaty with France, made in 1778. The stipulation that provisions should be considered as contraband, was especially offensive to the French government. They complained that this was a violation of our neutrality. (*Ibid.*, 133.) This treaty, too, in accordance with the law of nations, allowed British cruisers to seize French property in American vessels, whilst French cruisers could not, on account of the treaty of 1778, seize British property under like circumstances. This, amongst other things, led to the decree of the 2d March, 1797, of the Executive Directory of France, in which it was claimed that the treaty of 1778 placed France on the footing of the most favored nations with the United States, and therefore she was entitled to the same privileges in relation to the seizure of enemies' property, as had been given by treaty to Great Britain. Hence arose one of the most prolific sources of annoyance to our trade and of difference between the two countries. But although citizen Genet complained of this feature of the treaty, yet in the summary before referred to, it is spoken of as a violation of the treaty of 1778, but as giving France new rights under that

treaty. The question of whether provisions should be considered as contraband or not at that day, is not necessary to be argued in order to ascertain whether Jay's treaty was a violation of our obligations to France under the treaty of 1778. It was a controverted point then, as now, in the law of nations, whether provisions were to be considered as contraband or not. Perhaps the weight of authority at that time inclined towards the view of the subject which was taken in the treaty. At any rate, it was no violation of our treaty with France, nor was it a departure from our neutrality, in order to obtain peace with a powerful nation, to settle beforehand a controverted question of national law, and which is usually disposed of by treaty; for even now, provisions are defined to be contraband or not, according to the particular treaties governing the case. But even if the article were clearly not contraband, we had a right to fix it so, as between ourselves and another nation, without offence to third parties, if our own necessities and interests so required. Much has been said of the mutual guarantee in the treaty of 1778, and of the obligations of the United States under it. Whatever its obligations were, France did not call upon us to execute that article. Up to 1796, we have the declarations of our Secretaries of State, that no such demand had been made. Amid the grievances so often and loudly proclaimed by France, this is nowhere to be found in her public documents, as one of those particularly specified. On the contrary, she complained of violations of our *neutrality*, and it was probably her policy as well as interest that we should occupy the position of neutrals at that time. The trade which through our means she was enabled to carry on, was probably worth more than our assistance would have been if we had joined in the war. She did not formally relinquish the guarantee, because she knew its inconveniences to us, and she wished to retain it for purposes of negotiation. The expression referred to in Mr. Adet's letter, November 15, 1796, cannot be construed into a demand of the execution of the guarantee, but refers to another subject. He complains (page 367) that "we allow the French colonies to be declared in a state of blockade, and its citizens interdicted the right of trading with them." In the summary of grievances of the French government, made March 9, 1796, it is said, (page 133,) speaking of us, "They have consented to extend the denomination of contraband even to provisions. Instead of restricting it, as all treaties have done, to the case of an effective blockade of a port, as forming the only exception to the complete freedom of this article, they have tacitly acknowledged the pretensions of England to extend the blockade to our colonies, and even to France, by the force of proclamation alone." It was not the execution of the guarantee which Adet demanded; he was complaining of an article in Jay's treaty. But if France had called upon us for the execution of the guarantee, to make out the *casus fœderis*, she must have shown hers to be a defensive war. Our government did not admit that the *casus fœderis* had occurred in the war then existing, (see instructions to our ministers, July, 1797, page 458,) and so much is to be said on both sides of this question, that the right of France, if it existed at all—which is by no means admitted—was not clear enough to justify her in demanding the execution of the guarantee. But be that as it may, she certainly made no demand for its execution previously to 1796, and before that time her own conduct had been such as to forfeit her rights under the treaty. Let us review, now, the conduct of France herself in relation to these treaty obligations. On the 9th May,

1793, she issued a decree which violated the provision of the treaty of 1778, making the goods of an enemy free in our ships. Provisions, too, which by the treaty were not contraband if on their way to an enemy's port, were then so considered, (page 43.) Our vessels, 92 in number, were seized and detained at Bordeaux in 1793, (page 75,) and in July (page 149) a decree was passed to treat all neutral vessels as the English treated them. In March, 1797, a decree was issued, confiscating all merchandise belonging to an enemy; and if the productions of a hostile people were not sufficiently proved to be neutral property, they were directed to be seized on board of American vessels. American vessels without a *role d'équipage* were suddenly declared to be good prizes; and thus vessels, although supplied with proper papers under our law, were taken because they did not have papers according to a certain antiquated French form, of which the Americans were ignorant. If articles of the growth or manufacture of an enemy, although the property of Americans, were found in American vessels, they were seized under the pretence that they were not proved to be neutral. Depredations of all sorts were committed on our commerce, and the extraordinary commission consisting of Marshall, Pinckney, and Gerry, appointed to treat of these matters, was repulsed. Wearied out with these repeated outrages and insults, in July, 1798, an act of Congress was passed reciting these outrages, and declaring the treaties with France to be abrogated. From that period the treaty obligations were annulled by act of Congress; an act justified by the law of nations, and binding at least upon our own citizens. "Between the year 1793, (says Mr. Benton—see App. Cong. Globe, page 898,) and the complete restoration of friendship with France in 1801, the appropriations for the army were above \$20,000,000; those for the navy exceeded \$15,000,000; the authorized loans were above \$25,000,000; duties on imports were increased; direct taxes were laid. The stamp act and excise also made its appearance among us. The statute-book from 1793 to March 4, 1801, is thickly sprinkled over with acts for these taxes, loans, and appropriations." Again: "Ships of war were built; the regular army was augmented; a provisional army of 10,000 men was raised, and Washington was called to take the command; ships of war convoyed the merchantmen." Blood we know was actually spilt in the collision of armed ships of the two nations. For an abstract of the various acts of hostility towards France, see an extract from the speech of Judge Bell of Kentucky, (App. Cong. Globe, 1st session 29th Congress, page 901.) Such was the state of affairs under which the commission, consisting of Ellsworth, Davy, and Murray, was sent out to France. When the negotiations commenced which led to the treaty of September, 1800, the correspondence on both sides was conducted on the basis of an existing and uninterrupted peace. The reason was obvious: according to the American construction of the treaty, their claim for indemnities would be much larger if based according to the principles of the treaty, than if based simply upon the rights of their government according to the code of national law. They therefore treated upon the basis of the existence of the treaty until it was abrogated by their government, in 1798. The French commissioners professed to consider this treaty as having existed the whole time, and as never having been interrupted up to the period of the last negotiation. It was upon this basis that they claimed the existence of the guarantee, and all those peculiar privileges which, according to their construction, they were entitled to under the treaties of 1778 and 1788. The history of the negotiation had shown our aversion to the guarantee. They did not doubt their ability to escap

from the payment of the indemnities, by urging their claims to the guarantee, and they probably hoped to obtain some of those privileges which had been claimed and refused under those treaties. The whole history of the negotiation shows that these were the objects which France valued most; indeed it is probable that, except for purposes of negotiation, that article was little valued by France. But however it commenced, the progress of this negotiation at last developed the real state of the case. It had become obvious that there was an irreconcilable difference of opinion between the two commissions; the Americans denying, and rightly, that the treaty was in existence since 1798, or that France had any claims upon them for infractions of it. The French, on the other hand, maintained that their claims under this treaty were a fair offset to the American demands for indemnities. The resources of diplomacy had now been exhausted; a system of hostilities had been pursued which had led to a waste of public money, the capture of property, and the effusion of blood. The interests for peace in both countries were great and pressing; and as these were more urgent, the diplomatists became more earnest. There was no longer a chance for settling these differences, except by a continuance of these hostilities, to be followed probably by an open declaration of war. For, with the relations then existing between France and the residue of the world, an arbitration was impracticable, as was hinted by her commissioners; and there was no prospect of an agreement between the diplomatists of the two countries. Then it was that the French commissioners declared that in truth there had been war. Their President said, (see Senate Doc. 633,) "that if the question could be determined by an indifferent nation, he was satisfied such a tribunal would say that the present state of things was *war* on the side of America, and that indemnities could not be claimed." The French commission had previously (ibid., page 617) declared that the hostile acts of the United States had been war, and "that France disguised the true state of her relations with the United States when she recognised them as a simple, temporary, and reparable misunderstanding;" "that a new treaty between France and the United States ought to be before all a treaty of peace." Upon these grounds the French denied that any indemnities were due, the United States having taken satisfaction by war. A treaty was then concluded, in September, 1800, adjusting other subjects of difference, and postponing further negotiation as to these particular disputes to a future and indefinite time. The United States commissioners justify this arrangement, (p. 634,) on the ground "that it would extricate the United States from the war, or that peculiar state of hostility in which they are at present involved." The existence of war was thus admitted on both sides. The treaty provided for the payment of a large class of American claims which were made upon other grounds than those of treaty stipulations; it also provided for a release of captured vessels, and the adjudication of the cases then depending, upon the principles of the treaty. Three years afterwards, the treaty of Louisiana provided for the payment of damages to those Americans whose vessels had been detained by embargo at Bordeaux, and the two together covered nearly all of those cases ever acknowledged by France to have been good. Those claims for captures and seizures whose merits depended upon the construction of the treaties, she did not provide for. The largest class of cases for which we claimed indemnity were violations of our rights according to our construction of the treaties. But France justified them by her construction of those instruments. The two classes

of claims pronounced by our Secretary to be most interesting (p. 563) were, first, where the vessel's lading, or any part thereof, consisted of provisions or merchandise coming from England or her possessions; and secondly, when they were seized for want of a "*role d'équipage*." Now, France claimed, under the treaty of 1778, to be entitled to all the privileges given by Jay's treaty to England; and in order to exercise that right of seizing enemies' property in neutral vessels, she presumed everything of British growth and manufacture to be the property of an enemy, until clearly proved to the contrary. (See decree of Executive Directory, March 2, 1797, in which she makes this claim for that cause, and for the same reason assumes the right to require a *role d'équipage*.) Such was the state of the negotiation when the treaty was presented to our Senate for ratification. The Senate ratified, with the exception of the second article. This was probably stricken out because the Senate did not desire to keep open this cause of dispute. The subject had been pursued as far as it was due to the claimants or national honor to carry it. The treaty thus amended was ratified by Napoleon, with an assertion that by this amendment it was to be considered "that the two States renounced the respective pretensions which are the object of the said article." This treaty, thus altered again, was finally ratified by the Senate, and each State thus "*renounced its pretensions*." This is the state of the case upon which the claimants demand of us indemnity for spoliations committed on their commerce. We sacrificed their claims, they say, for a valuable public consideration, viz: for the abandonment of the claims for France under the treaty—or rather for the abandonment of the claim of France to the continued existence of the treaty, for that was her real demand. But it has been shown that France had no claims for the continuance of this treaty. It was abrogated for just cause by our Government in 1798, and never renewed. It has been shown, too, that France had no claims on us for infractions of the treaty. The defence of the United States against all such accusations was ample and complete. We obtained, then, no valuable consideration in exchange for those claims; nor did we sacrifice them. We prosecuted them in every possible manner—by diplomacy, by hostilities, at the expense of blood and treasure—until it became manifest that they could not be recovered, if at all, except by a long and bloody war, which the Government was not bound to wage, under the circumstance—a war whose losses would have been peculiarly severe upon this very commercial interest. But is this the whole of the argument against these claimants? Had they, in fact, any claim for indemnities, in 1800, even against France? It is said, we know, that the French commissioners admitted the existence of just claims against them for indemnity. But did they ever define the classes which they admitted to be just, or ever designate the probable amount which would be due on such demands? For a certain class of claims, which they acknowledged to be just, they provided in the treaties of 1800 and 1803. But it is to be remembered that, in relation to the two classes of claims said by our Secretary to be most important, France defended herself under the treaty. It is true that some such general admissions were made early in the negotiation on the subject; but at the close of the correspondence, the French commissioners insisted that all claims for indemnity had been discharged by the war. In the letter of the French commissioners, August 11, 1800, (see pp. 617, 618,) they take this ground distinctly. In the following September, the president of the French commissioners took the same

ground, and declared that, "if it could be determined by an indifferent nation, such would be its decision"—(p. 633.) It is beyond dispute, that a treaty of peace which closes a war made in prosecution of a claim, closes that account, either by a provision for its payment, if the one making war conquers the other, or by the treaty itself, if the contest is closed by mutual exhaustion. If a State is insulted by outrages committed on those under her flag, or otherwise within her jurisdiction, she is entitled to satisfaction, either by payment made to her injured citizens by the wrong-doer, or else by the execution of preventive justice in declaring war and inflicting punishment for the wrong. In either case the satisfaction is complete: the presumption is that war retaliates the injury by the sufferings inflicted on the wrong-doer with whom it is waged; for punishment, as well as payment, may be a satisfaction for a wrong. If this be so, the question arises, if the hostilities waged against France were not a satisfaction of the claim, for the very same reason for which an openly declared war would have been so considered. It was war in all its features save that of an open declaration, which is not necessary to constitute a war. It inflicted the injuries and sufferings which war occasions; large sums of money were expended and blood was spilled in the contest. The inconveniences occasioned were so great as to lead to a more acceptable treaty, and to put a stop to the wrongs of which we complained. This state of hostilities effected all that a bloodier war could have done, unless we suppose what is incredible, that we had conquered France; for, without a conquest, as was said by her commissioners, we could not have enforced a payment from her by war. Indeed, these hostilities constituted war itself, according to the declarations of the commissioners on one side, and the admissions of those on the other. If this be so, there was no sacrifice on the part of either State, for there were no unsatisfied claims between them. In the language of the clause last added to the treaty, it was a renunciation of "pretensions" on both sides, for *rights* they were not. But in truth this Government did not renounce the claims of our *citizens against France*: it renounced its pretensions as a State against France, as founded upon these claims: it renounced its right to claim satisfaction for them from that nation. It is true that such a renunciation, according to the law of nations, barred the claim; but does this constitute an obligation upon our Government to pay the claimants itself, because of the abandonment of its duties towards them? This brings us to the question as to the duties and obligations of a government to its citizens in such cases. Is there no period at which the obligation of a government to pursue even the just demands of its citizens should stop? The obligations of a government to its people grow either out of particular engagements in its social compact, or from the nature of society itself. There is no obligation in any constitution of government with which we are acquainted which binds a government to insure its citizens against losses sustained by depredations from foreign powers. There is a natural obligation on it to dispense justice at home, and to maintain its rights as a society, according to the law of nations, amid the different States of the world. The measure of assistance which a citizen can claim of his government against the wrongs of a foreign power to herself individually, is that it should maintain its rights as a society under the law of nations. If an individual becomes a creditor of a foreign government by a transaction within its own jurisdiction, he has no pretence for asking his government to collect that debt. But if that foreign power invades a vessel sailing under its national flag, and despoils its owner

illegally of the property which belongs to him, it is an insult to the flag under which he sails, and an offence to the nation of which he is a citizen. This is an offence to the whole of the people of whom he is one, and the government has a right to demand satisfaction. The most usual and effectual reparation, is a payment in full satisfaction of the damages sustained by the wrong-doer. Another mode of vindicating the national honor is to declare war against the aggressor, and take satisfaction by punishing him for the wrong. The right of the government in either case does not arise from any obligation to collect the debt of its citizens, but to redress a wrong offered to it as a society, and to remove the stain of an insult from its name. If its obligation were to collect the debt of the citizen, its duty would not be fulfilled by waging war only, unless it obtained also a payment of this debt. And yet no one pretends that in such a case the citizen could demand the debt of his government because it had failed to procure payment from the foreigner who owed it. A government is bound, as far as it is able, to protect its citizens from theft, both at home and abroad. It punishes the thief at home, but it does not pay the losses of the sufferer. It makes war on the nation which robs him when under the protection of his own flag abroad, but it is not bound to make good its losses in this case more than the other. Preventive justice is the object, and that, when obtained, is a full discharge of the obligation of government in either case. But suppose there were circumstances which would make war, in such cases, ruinous to the government whose subject was wronged; would that government be bound to pay the losses of that citizen because it had failed to make war upon the aggressor? Such cases have often occurred in the history of nations, and hard would it be, indeed, upon the other interests in a society, if they were forced to make good the losses of one because they were too weak to protect him. If a State is too weak to avenge an insult, the injury which she sustains as a community is in the loss of national reputation, and not of the property of the citizen. But suppose, in such a case, that the two nations were equal in power, but that war would bring almost incalculable injuries on both, and that the wrongs offered by the one to the other proceeded from no design to insult, but a difference of opinion as to the construction of a treaty: in such a case war would manifestly be an injustice to both nations; and yet, must the nation thinking itself aggrieved either wage such a war or pay indemnities to its citizens? These are questions to which all would reply in the negative; a response which shows that the obligation of a government in such cases is to society, to maintain its rights as a nation, and not to an individual, for the collection of his debt. Whether it will make war with another nation, for such a cause, is a question to be determined by a reference to the interests and honor of the society. The exercise of the war-making power can never be claimed as a matter of right due to an individual citizen. Can the citizen say you have maintained peace, a great public benefit, by failing to prosecute my just claims, and therefore I ought to be compensated by the public for such a benefit thus obtained? The peace thus maintained by the government was a common benefit—one in which the citizen had a share with all the rest; and why should the others be taxed to pay for his losses? The obligation of the government was to protect its rights as a nation, not to insure its individual citizens against loss. If it insures against loss by war, why not against losses by tempest? To do this, in either case, would be to compensate him twice. The merchant who conducts a trade exposed to risks, insures against them in the shape of profits paid by the consumer. If he insures directly, he makes that insur-

ance a part of the price of the commodity; or, if he becomes himself the insurer, he adds something to his profits to compensate him for his risk. The community thus insure him for losses in the shape of an increased price for his commodities. To pay him again from the national treasury would be to pay him twice. It may be said, perhaps, that he can only thus insure against risks which are probable, and that losses arising from such violations of the law of nations were not foreseen or provided against. The history of nations unfortunately presents too many instances of such depredations to justify the supposition that such risks are unknown to the trading community; and if it were so, such considerations could only apply to the first acts in a long series of spoliations. According to these views, we should have been under no obligation to pay these claims if we had failed to make war, unless, indeed, we had made a valuable use of them for public purposes, which we have endeavored to show was not the case. But in point of fact we did make the war. It was considered as war, and was so, for all the purposes which could make war a satisfaction of our supposed obligations to the claimants. If we had declared war to obtain payment for these claims, and failed to procure the money in the treaty of peace, we should have been under no further obligations to the claimants, as all admit. We should have been under no obligation, because we should have expended as much, or more, in the fruitless effort to recover them; because we inflicted injuries and punishment on those who had committed the wrong, and thus had done whatever we could to restrain them from repeating such outrages. Did not the hostilities which we waged cost us far more than the claims which occasioned them were worth, and did they not inflict such injuries on France as led to changed and better relations between us? There is no reason which could be urged for the one as a discharge of our obligations to the claimants, which does not apply to the other. What foundation remains, then, upon which these claims can be rested? The pretence that we obtained the abandonment of claims of France upon us by the sacrifice of their just rights, is shown to be fallacious; because, in truth, France had no such claims. They fail, therefore, to show any valuable consideration obtained in exchange for their rights. Nay, they fail to show that they had any valuable rights which were not secured, because there is strong proof that they did not exist, the right of satisfaction by payment having been lost in the satisfaction taken by war. Nor have they succeeded in showing that they had at any time a right to demand of us to make war upon France, or ourselves to pay their claims; and assuming that they had such a right, their demands upon us have been satisfied by the war which is shown to have been waged for the protection of their rights.

But how come these claims here, after a lapse of fifty years, and how can we ever decide the question so as to get rid of it? If these claims upon our government were ever good, is it possible for us to pay them so as to do justice to the parties? How are we to discriminate between the good and the bad claims, so as to secure the government against mistakes and frauds? After the lapse of fifty years, most of the evidence is gone which would be necessary for a full and fair examination of their justice. Those who are interested preserve most of what is to be found, and as time rolls on, weaker and weaker evidence becomes the best of which the nature of the case is susceptible, until mere presumptions will suffice to charge the government, and scarce any protection will be left against frauds. To whom are we to pay these debts if they be due? There are heirs, creditors, assignees. To whom shall the money be paid, and how are their several relations to the

claimant to be ascertained? The chances for mistake as to the parties entitled are very great. Shall we pay to the administrator, who will probably be the agent of the claim, and leave him to settle the rights of the parties? How easy would it be for him to retain the money on a claim, established perhaps upon imperfect evidence, and keep it all to himself. Between the conflicting claims of heirs, assignees, and creditors, the chances are that the person really entitled would not often obtain the money. There certainly ought to be some limitation as to time, beyond which such claims should not be presented. It is easy to show, upon the mere calculation of chances, that any claim must succeed if presented year after year, without limitation as to time. If it is rejected nine hundred and ninety-nine times, the claim is not defeated; but if it passes on the thousandth trial, it is paid. Where governments are concerned, it is especially important to establish some limitation as to time. There are few or none who feel a deep interest in defending the government against unjust claims. No effort is made to preserve evidence to protect it, whilst private interest induces claimants to preserve what is in their favor. Evidence often contradicted at first, whilst contemporaries of the event are alive, becomes sufficient merely because that which contradicted it has perished. Not only is it impossible to defend the government in such cases, but it becomes impracticable to do real justice between the parties entitled. The true relations between the parties and their several titles to the claim, it would be very difficult to establish. The creditors, who are often the persons really entitled, would generally get nothing in such cases; the evidence of their claims would have been lost. Hopeless originally as to the claim, and equally hopeless as to the ultimate solvency of their debtor, in most cases the evidence of their title would be lost. Indeed, the debts themselves would be barred by the statutes of limitations existing in the States. Twenty years would create a presumption of payment of a bond; other contracts would be barred in less time. Even a judgment, if not renewed, would be presumed at common law to have been satisfied after a period of twenty years, unless there were positive evidence to control such a presumption. But the claim against government is good forever, and the heirs, not of the creditor who was really entitled, but of the original claimant, would get it. A man may thus present a claim against government for one hundred years successively; and if he does not assign it, the probability is that his heirs will get it, although he had died utterly insolvent. It is no fair answer to this view that there have been so many favorable reports of committees to whom this subject was referred. It is the parliamentary rule to refer a subject to a committee which is favorable to it; and it is too much to ask that claimants should have not only the benefit of the rule, but also acquire from this very indulgence a presumption in favor of their demands. If the parliamentary rule be pursued, and the reports of committees so constituted are to be considered as presumptions of title on the part of the claimants, they must certainly succeed if they will only persevere long enough. Under this system, the older the claims the stronger would be the presumption in their favor.

If the past action of Congress is to be examined to ascertain what presumptions have been created by it in relation to these claims, it would seem that the inferences from that action are rather adverse than favorable; for, until 184—, there has never been any vote of the majorities of the two houses of Congress in their favor. The failure to obtain such a sanction of their claims for a period of nearly fifty years, is rather to be considered as evidence that Congress believed them to have been unfounded.

IN THE SENATE OF THE UNITED STATES.

JANUARY 15, 1852.

Ordered to be printed.

Mr. FELCH submitted the following

REPORT:

[To accompany bill S. 116.]

The Committee on Public Lands, to whom was referred the petition of Jonathan Kearsley, receiver of public moneys at Detroit, in the State of Michigan, and the petition of John Biddle, late register of the land-office at the same place, respectfully report:

That at the first session of the last Congress this subject was referred to the Committee on Public Lands, and a bill reported by them for the relief of the petitioners. The committee, concurring in the views expressed in that report, hereto append the same, and also present a bill to authorize the settlement of the accounts of the petitioners upon just and equitable principles:

For several years, including the years 1831, 1835, and 1836, the petitioners were register and receiver at the land-office at Detroit, Michigan, and assiduously devoted themselves to the duties of their respective offices. The quantity of land sold, and the amount of business transacted, will be best indicated by a statement of the amount received on such sales during the three years abovementioned, which was as follows:—

In 1831	\$283,585 80
1835	600,646 54
1836	1,861,597 71

The extraordinary sales of the three years abovementioned, being many-fold more than were ever, before or since, made at that office in the same space of time, necessarily demanded much extra aid of clerks, in order to accommodate the applicants for purchases. The ordinary business of the office, when unaffected by any unusual pressure, required the constant services of the register and receiver, with a clerk always employed by each. The unprecedented amount of sales during the three years above specified, compelled those officers either to refuse many of the applications for purchases, or to employ an additional number of clerks to transact the business. The public interest demanded that the latter course should be taken; and the petitioners seek to have restored to them the amount which they paid for that purpose.

The receiver's compensation consists, under provisions of law, of a salary of \$500 per annum, and a commission of one per cent. on money received and accounted for by him, with the limitation that the aggregate sum of these allowances shall not exceed \$3,000 for any one year. In order to obtain the maximum of compensation, including the salary of \$500, sales of land to the amount of \$250,000 must be made in each year. This law was approved April 18, 1818, and at that time the amount therein specified was so large, compared with previous sales of public lands, that no one could have anticipated that a larger sum would ever be received at any office for the sales of a single year. The limitation upon his receipts was evidently founded upon the presumption that his expenses and labor would not be required beyond that which was necessary in disposing of lands to the amount of \$250,000 in any one year. If sales were made to a greater amount, it is evident that additional clerks would be needed to perform the duty; and if the receiver was compelled to pay the extra clerk-hire, his salary would be diminished by the amount so paid. This would present the anomaly of a salary increased in proportion to the labor and expense of the office to a given maximum, but diminished in proportion to the labor and expense above it. Thus, if the sales amounted in a given year to \$250,000, the receiver's salary would be \$3,000; if the sales were doubled, and extra clerk-hire to the amount of \$1,500 were required to do the additional business, the receiver's compensation would be reduced by one-half.

It was early determined at the Treasury Department that the maximum compensation could not be justly imposed, when and because the money received, and accounted for on sales of public lands, had exceeded the sum of \$250,000; and it was long the practice to allow, at the accounting office, a credit of the amount actually paid by the receiver and register for clerk-hire, in making sales above that amount. The claim of the petitioner was presented for like allowance, but being the first of its class that had been brought before the present Secretary of the Treasury, he referred the matter to the Attorney-General for his opinion. That officer, in a written opinion, dated March 13, 1846, declared that "the allowance, within reasonable limits, of actual expenses incurred in procuring the services of necessary clerks, may be just and proper, but it is for the Legislative Department to determine whether the discretion shall be given to the Executive. In my opinion, such discretion has not been conferred by existing laws."

Under the construction given to the law at the Department, before the opinion of the Attorney-General was submitted, the following credits, of a character similar to the claim of the petitioner, had been allowed:—

John Findley	\$628 30
Thomas A. Smith.....	1,981 05
Tuston Quarles.....	206 00
John Taylor, (two years).....	2,799 75
Charles C. Haskell	874 20
J. M. Lemmon.....	289 00
D. B. Miller, (two years).....	1,350 00

After the opinion of the Attorney-General was submitted, the claim of John Spencer, late receiver of public moneys at Fort Wayne, Indiana, being rejected by the accounting offices, was presented to Congress, and

under an act authorizing the settlement of his accounts upon equitable terms, the credit was subsequently given to him.

The same compensation to which the receiver is entitled, is by law given to the register.

At the last session of Congress, two acts were passed and approved, extending the principle of reimbursement for such expenditures, to Thomas C. Sheldon, late receiver, and Abraham Edwards, late register of the land office at Kalamazoo, Michigan.

It will be seen, by the above statement of the sales at the Detroit office, that the receipts exceeded \$250,000, during the year

1831, by-----	\$33,585 80
1835, by-----	350,646 54
1836, by-----	1,615,597 71

Making, in three years, an aggregate of-----\$1,999,830 05

Over \$250,000 per annum; for the expenses attending which, no remuneration has been received.

The bill herewith reported authorizes the auditing and settling of these amounts, and the payment of such balance as may be found justly due.

IN THE SENATE OF THE UNITED STATES.

JANUARY 15, 1852.

Ordered to be printed.

Mr. FISH submitted the following

REPORT :

[To accompany bill S. 117.]

The Committee on Naval Affairs, to whom was referred the petition of Surgeon D. P. Edwards and other medical officers of the United States Navy, for compensation for extra expenses incurred in serving with a regiment of marines in Mexico, report :

That the petitioners being medical officers in the naval service of the United States, during the late war with Mexico, were, by orders of the Navy Department placed on duty with a detachment of marines, and served on land with the army during a portion of the war—advancing with the army into the interior of Mexico. In this service they were subjected to the same expenses as to horses, forage, servants' wages, rations and other contingencies of the field, as were the same grade of medical officers of the army, while the act establishing the compensation of the medical officers of the navy contains no provision for these allowances.

The temporary service upon which these officers were detached was wholly without the ordinary line of their duty, and involved both labor and expenses not contemplated by their appointment. Those labors were cheerfully, promptly and efficiently discharged, as appears from the testimonials of the officers of the army with whom the petitioners served, which are submitted to the committee; and in the opinion of the committee, the memorialists are fairly and fully entitled to an allowance for rations, forage and servants, in proportion to the time they were on the detached service, equal to that allowed to officers of the army of similar standing.

They recommend the passage of a bill for their relief, which is reported herewith.

Hamilton, *Print.*

IN THE SENATE OF THE UNITED STATES.

JANUARY 15, 1852.

Ordered to be printed.

Mr. FISH made the following adverse

REPORT:

[To accompany bill S. No. 81.]

The Committee on Naval Affairs, to whom were referred the petition of John Bryan, administrator of Isaac Garretson, deceased, late purser in the navy, praying an allowance of office-rent; and also Senate bill 81, for the relief of the administrator, report:

That Isaac Garretson was a purser in the navy on duty on the Baltimore station from 4th March, 1822, to the end of the year 1829. He died in January, 1830; and, upon a settlement of his accounts, he was found to be in arrears with the Government to the amount of \$1,392 64, for which a suit was prosecuted against his administrators.

It was proposed by the petition to cancel this balance, and to create an indebtedness from the Government to the estate of Garretson, by a charge of \$200 per annum, for office rent during the period that Garretson was on duty at the Baltimore station, and by the claim of interest upon this annual charge.

The claim for rent was disallowed, and properly disallowed, by the auditor, upon the ground that there was no authority for the charge; but, on the contrary, that it was in conflict with an express regulation of the department. And, while there was no authority in laws for the allowance by the auditor, the committee are of opinion that there is an entire absence of equity on which to rest any action of Congress in pursuance of the prayer of the petition.

Some time prior to Garretson's being ordered to the station, an allowance of \$500 per annum, for house-rent, had been made to the purser at Baltimore. This allowance was, however, discontinued by a regulation of the Navy Department of June 17, 1821,—many months prior to Garretson's being ordered to the station. As there were four other pursers, not on duty at the time, and as the service at a navy-yard is generally considered desirable, it is scarcely probable that the assignment to this yard was compulsory; but it may be inferred that Garretson's entrance upon the office, after the discontinuance of the allowance for rent, was voluntary, as it is quite certain that his continuance in its enjoyment, under the restriction imposed, was wholly discretionary.

He could not have been ignorant of the regulation of the Department

(disallowing rent at the Baltimore station), at the time he entered upon the duties of that office : nor does the idea of making a charge therefor appear to have occurred until many years after he had been enjoying the appointment. He commenced his duties at that station in March, 1822 ; his quarterly accounts were rendered with regularity, and no claim for rent appears to have been advanced until the account for the third quarter of 1828, (nearly seven years after his assignment to the station) and then it is made to extend back to the commencement of his service.

It is true, that in 1831 it was thought proper again to make an allowance for house-rent to the purser on the Baltimore station. It is to be presumed that reasons existed at that time for the allowance which had not existed for the preceding ten years ; and that as soon as the propriety arose for the allowance, its exigency was complied with. And it is also to be presumed that the Navy Department was better able, in 1821, to judge whether the public interests required the discontinuance of the allowance for rent ; and was also better able, from 1821 to 1831, to judge of the reasons for continuing the disallowance than Congress can be at the present time, after the lapse of twenty or thirty years. The question was one within the legitimate discretion of the Department, which Congress cannot undertake to overrule by the allowance now asked, without establishing a precedent which may lead to a review of other acts wholly within the proper sphere of action of the several departments, however long since executed.

This petition has for several years past been frequently presented to one or other of the two houses of Congress ; but, so far as the committee are aware, it has never received a favorable consideration from any committee to which it has been referred.

The committee fully concur in the report made in this case to the Senate on the 14th June, 1848, (No. 170, 1st session, 30th Congress,) and repeat the recommendation therein made, that the bill do not pass.

IN THE SENATE OF THE UNITED STATES.

JANUARY 15, 1852.
Ordered to be printed.

Mr. JONES, of Iowa, submitted the following

REPORT:

[To accompany bill S. No. 118.]

The Committee on Pensions, to whom was referred the petition of Harriet R. F. Capron, widow of the late Captain E. A. Capron, of the first regiment United States artillery, beg leave to report :

That said petition was first presented to the Senate on the 2d of January, 1851, and on the 24th of the same month, the Committee on Pensions made a report, as follows: "That the petitioner sets forth the valuable services of her husband, who fell in the battle of Cherubusco, near the city of Mexico, on the 20th day of August, 1847, leaving her wholly destitute of means for her support and that of her children, six in number, of whom the eldest was but eight years old. In view of the destitution of the petitioner and her young and helpless family, and in consideration of the many services and gallantry of her deceased husband, the committee have agreed to report a bill for the continuance of her present pension."

The report was accompanied by a bill "to continue the pension of Harriet R. F. Capron," and it provided that the pension which she had received as the widow of Captain E. A. Capron, should be paid to her during her life. The bill (No. 424) was not acted upon by the Senate after its introduction; since which period the petitioner has married. Her present condition, however, is not such as to place her six young children beyond the effects which have resulted from the loss of their gallant father; and she now asks that the pension which has heretofore been allowed to her, may be given to her children.

The petition is accompanied by eight letters from highly respectable and intelligent officers of the army to whom the character and services of Captain Capron were well known, and who testify to the great loss which the country sustained in his untimely death, while gallantly leading his company to the attack of the enemy's works at Cherubusco.

Captain Capron's services from 1833, when he was attached to the first regiment of artillery, as second lieutenant to the time of his death, were of the most active and useful kind; and, as stated by Major Henry C. Wayne, "during this active service of fourteen years, from 1833 to August 30, 1847, he was absent from duty but two months; the only leave of absence he ever had, and which he obtained solely for the purpose of being united to her who is now your petitioner."

His bravery and coolness in action, which are alluded to in the reports of battles with the Indians in Florida, rendered him a very efficient officer; and the reputation which he had gained previous to the war with Mexico, was enhanced by his gallant conduct and his devotion to his country's service to the day of his death. Before he fell in the battle of Cherubusco, he had shared in the dangers of Vera Cruz, Cerro Gordo, and Contreras, and no man fought more bravely in those battles to sustain the honor of our flag.

The committee, looking to the valuable services and meritorious conduct of Captain E. A. Capron during the period he was an officer of the army, have deemed it proper to report a bill, granting to his children, for five years, the pension heretofore allowed his widow.

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1852.

Ordered to be printed.

Mr. UNDERWOOD made the following

REPORT:

The Committee of Claims, to whom was referred the petition of Samuel M. Bootes, report:

That the claim made by the petitioner was investigated to the Committee of Claims at the second session of the thirty-first Congress, and an adverse report made by the Committee, which is now adopted and made part of this report. The material facts are fully and correctly stated in the former report, and the committee, after considering the case, see no reason for dissenting from the conclusion arrived at in that report. In the opinion of the committee, the admission of the claim of the petitioner would form an unwise if not dangerous precedent, and they therefore recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

IN SENATE.—February 11, 1851.

The Committee of Claims, to whom was referred the petition of Samuel M. Bootes, report:

“Samuel M. Bootes, a clerk in the Treasury Department, represents that he was appointed to fill the station of book-keeper in the office of the Treasurer of the United States, and that he was to receive as compensation ‘the same rate of salary as that paid to the most competent book-keepers of the department, \$1,400 per annum, and the ten per cent. additional, as then allowed by law.’ The memorialist states that he received compensation at the rate above stated, to wit: \$1,400 per annum and ten per cent. thereon, from the date of his appointment in May, 1837, to the 30th of November, 1837, when he was reduced to a salary of \$1,200 per annum, and has been continued at that rate ever since. The memorialist asks that he may be paid at the rate first agreed on from the 30th of November, 1837, down to this time, with the exception that he makes no claim for the ten per cent. additional to the salary after the expiration of the year 1838.

“The following facts appear: that John Campbell, Treasurer of the United States, wrote to Mr. Woodbury, Secretary of the Treasury, under date of 19th May, 1837, stating, ‘It will be absolutely necessary to employ one first rate book-keeper, habitually rapid and accurate: no ordinary hand can

possibly perform the duties which will be assigned to him in due time.' On the 25th of May, 1837, the Secretary in reply, said: 'I approve of the employment of Mr. Bootes as a temporary clerk in your office; his compensation to be at the rate of \$1,400 per annum during the time his services may be required.' On the 3d November, 1837, Mr. Campbell, the Treasurer, informs Mr. Woodbury, the Secretary, that the regular business of his office had not been diminished; that he would probably be able to get on without employing any other clerks, but could not say that the extra clerks then employed could be dispensed with, and that he thought two of them would be required for a long time, if not permanently. This letter contains the following statement: 'As your direction to discontinue the extra clerks seem to refer more to the appropriation from which they may be paid, I have to remark that this change would have no effect upon either of the individuals except Mr. Bootes, who would be thereby reduced from the compensation allowed him on his first engagement as a book-keeper, while he would be required to continue to act in the same capacity. I therefore submit this question to your favorable consideration in his behalf.' The letter concludes by recommending the continued employment of Mr. Bootes and others. On the 8th of November, 1837, the Secretary of the Treasury, in reply, says: 'I have to observe, in reply to your letter of the 3d, that you have the approbation of the department to employ the clerks therein referred to as long as their services may be needed. But I regret, so far as respects their pay, to add that it must be from this date as clerks under the new law, and at the salaries therein provided.' The *new law* alluded to by the Secretary, reorganizing the Post Office Department, approved July 2d, 1836, provides, in the 21st section, for the employment of three clerks in the office of the Treasurer of the United States—one at a salary of \$1,400, one at a salary of \$1,200, and one at a salary of \$1,000 per annum. Or if, instead of the act relating to the Post Office Department, the Secretary alluded to the act approved 12th October, 1837, authorizing the issue of treasury notes, then it will be seen that the third section of this latter act authorizes the treasurer and register of the Treasury, with the consent and approbation of the Secretary of the Treasury, 'to employ such additional *temporary* clerks as the duties enjoined upon them by this section may render necessary: provided said number shall not exceed four, and with a salary of not more than at the rate of twelve hundred dollars to each per annum.'

From the foregoing facts it appears that Mr. Bootes was first employed as a temporary clerk at a salary of \$1,400 so long as his services might be required, and that this employment took place in May, 1837; that the Secretary of the Treasury gave directions to discontinue the extra clerks; that the Treasurer, in reply on the 3d November, 1837, asked for the continued employment of Mr. Bootes and others; that the Secretary consented, but with the express declaration that in respect to salary it must be done under the new law; and that since November, 1837, Mr. Bootes has received \$1,200 per annum for his services. From these facts it is clear that the contract by which Mr. Bootes was at first temporarily employed was legitimately terminated in November, 1837. Thereafter he was placed upon the footing of a clerk with a salary fixed by the new law. This was a new contract, and the Government has fulfilled it to the letter on its part. The committee cannot, therefore, perceive any solid foundation for the claim of the memorialist, and therefore recommend the adoption of the following resolution:

IN THE SENATE OF THE UNITED STATES.

JANUARY 19, 1852.

Submitted, and ordered to be printed.

Mr. STOCKTON made the following

REPORT:

[To accompany bill S. No. 124.]

The Committee on Pensions, to whom was referred the memorial of Elizabeth Monroe, report :

That the memorialist is the widow of Surgeon Thomas J. C. Monroe, late of the army, who, after a service of twenty-eight years, died from the effects of exposure and arduous duty. Her memorial, asking a pension, was first presented to the Senate the 10th of February, 1848; and a bill for her relief was reported from the committee on Pensions on the 4th of May in that year. The 24th January, 1850, the subject was again referred to the committee, and on the 4th of February following they made a favorable report, accompanied by a bill. In that report the committee say:—"An examination of the facts set forth by the memorialist, and the evidence accompanying the same, has convinced the committee that the memorialist should receive relief." Concurring in this view, the committee recommend the passage of the accompanying bill, granting a pension to Elizabeth Monroe for five years.

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1852.

Submitted, and ordered to be printed.

Mr. WADE made the following

R E P O R T :

The Committee of Claims, to whom was referred the memorial and accompanying documents of Robert Piatt, claiming pay for services rendered as assistant deputy commissary for purchases, in the north-western army during the years 1812-'13 and '14, and praying the passage of an act to authorise the accounting officers to settle his claim upon the principles of equity and justice, have had the same under consideration, and now report :

That after the most careful investigation of the voluminous papers and documents on file, and the various arguments of counsel, submitted in behalf of the claimant, they were led to suspect that a more searching investigation of the claim by the accounting officers of the Treasury, would throw additional light upon the subject. They accordingly caused such investigation to be made, the result of which appears in the able report of the third Auditor, herewith submitted, and adopted by the committee as their report in the case, and by which it will appear that the claimant, as long ago as 1814, received from the Treasury payment in full for the identical services set up in his memorial, and this part is evidenced by receipts under his own hand on file in the Treasury. Your committee, therefore, move the following resolution :

That the prayer of the memorialist be rejected.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
January 15, 1852.

SIR : I have the honor to return herewith the memorial and other papers of Robert Piatt, transmitted to me by the clerk of the Committee of Claims of the Senate, with a letter requesting me to furnish the committee with any information in my office, calculated to throw light upon the merits of the case, together with my views of the rules of law and equity properly applicable to it.

It may be proper, in the first instance, to present a summary view of the action heretofore had upon or in relation to the case.

In May, 1850, the memorialist, by letter, requested to be furnished with a certified copy of the settlement of his account, as deputy purchasing commissary, during the war of 1812, and a similar copy of the account of Hugh Hamilton, printer.

Glenn, which, he said, would be found in the accounts of John H. Piatt; and in the reply (dated May 30, 1850, and now among the papers) he was informed as follows: "I have caused a search to be made through the accounts of John H. Piatt, without finding them to contain any evidence of a claim in your name for services of any description, having been paid or presented for allowance. Hugh Glenn is found to have been employed as assistant deputy commissary of purchases, and was allowed compensation for one year, amounting to twelve hundred dollars. A copy of the account and the endorsement upon it, will be found enclosed." Soon thereafter the memorialist preferred a claim thus stated:

"The UNITED STATES,	To ROBERT PIATT,	Dr.
For his services as assistant deputy commissary of purchases from		
September 1, 1812, to March 1, 1814, at \$1,200 per annum-----\$1,800		
Expenses for same period at \$60 per month----- 1,080		
<hr/>		
\$2,880		

This was accompanied by a statement of the Hon. D. T. Disney, by an affidavit of the memorialist, sworn to in this city, on the 19th June, 1850, more than *thirty-six years* after the period specified in the claim, and by sundry other papers, all now in the parcel received from the committee. For reasons appearing in a long report addressed by me to Mr. Disney, on the 16th July, 1850, I declined to make any allowance on the claim. By some inadvertence of the clerk, who heretofore examined it, and who has since resigned, that report, when the papers were subsequently in the office, appears to have been mislaid, and after his departure, was found on his desk. It is now again placed among them. With reference thereto, Mr. Disney prepared and filed a long argument, and the case was then reported by me to the second comptroller, for his decision, and this was against its allowance. On a further argument Mr. Disney then appealed to the Secretary of War, to reverse the decision of the accounting officers; and the Secretary having decided that the case was one over which he had no control, it was next carried before the President, who obtained an opinion from the Attorney General, and then determined that the decision of the second comptroller was conclusive. Soon thereafter the memorial appears to have been presented to the Senate, and referred to the Committee of Claims, and to have been so again referred at the present session of Congress.

The clerk best qualified, from his long experience, for looking into old matters of this kind, has charge of a branch of the business of the office, the duties of which demand the utmost of his time. In order, however, to a compliance with the request of the committee, he has now been taken therefrom, and the result of his investigations on the subject will present a view of it very different from that appearing in the previous reports and arguments before alluded to.

Among the papers with the accounts of John H. Piatt as deputy commissary of purchases, a letter to him from Major General Wm. Henry Harrison, dated "Head-quarters, Piqua, 27th September, 1812," has been met with, and it contains as follows: "*Being authorised by the President to appoint an additional commissary, I have selected you for the purpose, and you are hereby appointed to act as Deputy Commissary General. Your appointment is to be confirmed by the President, but in the mean time you will be invested with all the powers and emoluments of the office. Your*

pay will be the same with that allowed Col. Buford. The law of Congress creating your department will define your duties. Those which will immediately call your attention, are the supply of provisions for the North Western army. * * You are hereby authorised to draw upon the Secretary of War for such sums as you may require for the carrying into effect the orders now given, and those you shall receive hereafter." And another letter of Gen. Harrison, to John H. Piatt, dated "Head-quarters, Franklinton, October 15, 1812," commences thus: "Dear sir, I enclose you your appointment from the Secretary of War and send you a packet from the war office, which I suppose contains a similar one." And in the printed army register for 1813, John H. Piatt is found to be named as "deputy commissary of purchases." By the fourth section of the act to establish a quartermaster's department, and for other purposes, approved March 28, 1812, it was enacted, "That there shall be a commissary-general of purchases, and as many deputy commissaries, as in the opinion of the President of the United States the public service may require, to be appointed by the President, by and with the advice and consent of the Senate;" and by the twentieth section of the same act, the President was authorized, in the recess of the Senate, to appoint such officers, or any of them, the appointments being submitted to the Senate at their next session, for their advice and consent. The seventh section of the same law provides, "That the salary of the commissary general of purchases shall be three thousand dollars per annum; and the compensation to a deputy commissary shall not exceed two and one-half per centum on the public moneys disbursed by him, nor in any instance, the sum of two thousand dollars per annum."

Accordingly, on the first settlement of the accounts of John H. Piatt, on the 11th of December, 1813, he appears to have received a credit of \$2,000 for his compensation as deputy commissary of purchases, from the 27th of September, 1812, to the 26th of September, 1813, as a commission at two and one-half per centum on his disbursements would have exceeded that sum; and on another settlement of his accounts as deputy commissary of purchases, from September, 1813, to the 1st of June, 1814, he received a further credit for compensation, at \$2,000 per annum, for that period. At the latter date he ceased to be a deputy commissary of purchases, having entered into a contract for the supply of provisions for the army, to take effect from that day.

I am not aware of any rules of law or equity which would have entitled an assistant of a deputy commissary of purchases to any compensation for his services from the United States. The compensation of the deputy himself, had by law, as already shown, to be regulated by the amount of the public moneys disbursed by him; and if he employed another to aid him in his purchases, it is conceived to have been to him that the assistant had to look for his compensation; and that there was some understanding of this nature between the parties, may be inferred from the representation in the statement annexed to the application of the memorialist, that the "amount of compensation to be allowed by the Government was altogether uncertain, but the aforesaid John H. Piatt agreed that in any contingency he himself would allow the applicant in this case, the amount of his travelling expenses, which he estimated at two dollars per day, or sixty dollars per month."

As the procedure of the accounting officers in relation to the before mentioned claim preferred in the name of Hugh Glenn, evinces how the law was construed and regarded by them at the time, and as the copies of the papers

on file as to that case, which were furnished to the memorialist, in consequence of his first application, are observed to be unproduced, the same will now be herein set forth.

"The UNITED STATES,

To HUGH GLENN,

Dr.

"For his services acting as assistant deputy commissary of purchases, from the 24th of September, 1812, to the 24th of September, 1813,—one year, - - - - - \$1,200 00
See General Harrison's order of the 24th of September, 1812.

"October 1, 1813.

"John H. Piatt, Esq., is authorized to receive and receipt for the above account, or for any sum that may be allowed me for the services specified in the above account.

H. GLENN."

"*Endorsed.*—Account of Hugh Glenn. Inadmissible—not appointed in conformity to any act of Congress—see the fourth and twentieth sections of the act of 28th of March, 1812, and the eighth and ninth sections of the act of 3d of March, 1813." "Department of War, Accountant's office, Nov. 25, 1813. W. S." This endorsement is in the handwriting of W. Simmons, the then accountant of the Department of War. No order of General Harrison of the 24th of September, 1812, appears to be on file with the accounts of John H. Piatt. There is found to be a letter to him from General Harrison, dated on the 21st of September, 1812, of this import:

"It has become essentially necessary to the accomplishment of the objects of the campaign that some person should be appointed to superintend the *receiving and forwarding the provisions* which have been provided for the army. You will therefore be pleased to consider yourself as a deputy commissary subordinate to Colonel Buford, of Kentucky, for the purposes above mentioned, and for the procuring of such other articles as may be required, and for which there will not be time to apply to Colonel Buford. Your compensation will be liberal, to be fixed by the Secretary of War. You will employ such assistants as you may want, and allow them a reasonable compensation. You will immediately proceed to purchase one hundred additional pack horses, for which you are furnished with a draft for four thousand dollars." This authority appears to be special, and to have been given previous to the regular appointment of John H. Piatt, as Deputy Commissary of purchases on the 27th September, 1812, herein before noticed. To sustain the demand for the compensation of Hugh Glenn, resort is shown to have been had to Gen. Harrison, and a certificate to have been obtained from him as follows: "Upon the appointment of John H. Piatt as Deputy Purchasing Commissary to the North-Western army in the fall of 1812, I authorized him to appoint such assistants as were indispensably requisite for the performance of the duties assigned to him. In consequence of which he appointed Mr. Hugh Glenn, who served in that capacity until the resignation of Mr. Piatt, and I believe that no officer ever acted with more zeal and fidelity than he did. Given at Cincinnati, the 11th August, 1815. William Henry Harrison, late Major General."

By the third section of the act of Congress approved May 22, 1812, amendatory of the act of March 28, 1812, before cited, it is enacted, "That in addition to the allowance made to the quartermaster general and com-

missary general, respectively, in and by the act hereby amended, it shall and may be lawful for the Secretary for the Department of War, for the time being, to allow to them, respectively, such sums as, in his opinion, shall have been actually and necessarily expended in their several departments for office rent, fuel, candles, and *extra clerk hire*." And when in Washington, in July, 1816, Mr. John H. Piatt renewed his demand for the compensation of Hugh Glenn, in this form :

"The UNITED STATES,

Dr.

"To JOHN H. PIATT, Deputy Commissary General.

"For this sum paid Hugh Glenn for his services from 27th September, 1812, to 27th September, 1813, being twelve months, at \$100 per month, employed by J. H. Piatt, as a clerk in the Commissary's Department----- \$1,200

"I do certify upon honor that the above named *Hugh Glenn was employed by me as a clerk in the Commissary's Department* while I acted as Deputy Commissary General, for the period above stated, and that I have actually paid the said Hugh Glenn the sum of twelve hundred dollars for his services as aforesaid.

"JOHN H. PIATT."

City of Washington, 8th July, 1846.

On this paper there are endorsements as follows :

"Account, John H. Piatt of \$1200, paid to Hugh Glenn, with his certificate. Submitted for the decision of the Secretary of War.

P. HAGNER."

"This account was laid before the then Secretary of War, Mr. Crawford, and not acted upon by him at the time.—P. H."

"Allowed J. C. C."

Having thus been allowed as *clerk hire* by Mr. Calhoun, when Secretary of War, the amount was passed to the credit of Mr. John H. Piatt on a settlement of his accounts in January, 1818.

The difficulty he met with in procuring this credit, would doubtless have prevented any attempt by him to obtain from the United States, compensation for the services of Robert Piatt, had he supposed him to have remained unpaid for them.

In this respect, however, the searches of the clerk who has been now employed, have proved more successful than those of the clerk to whom the examination of the case was heretofore assigned. The accounts of John H. Piatt are very voluminous, and owing to the many references to them and otherwise, they become much confused and scattered ; but among them, vouchers have been now found, copies of which will be here introduced :

"CINCINNATI, October 1, 1813.

"The UNITED STATES,

To ROBERT PIATT,

Dr.

"For his services as assistant deputy commissary of purchases from the 15th August, 1812, to this day, at sixty dollars per month, he finding his own horse and himself----- \$810

"Received from John H. Piatt, purchasing commissary, the sum of eight hundred and ten dollars in full for the above account."

(Signed duplicate.)

"ROBERT PIATT."

"Attest—A. WALLACE."

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On this voucher there is a pencil memorandum in the hand writing of the present chief clerk of this office, (and who at the time in question was a clerk in the accountant's office,) in these words: "Consulted Mr. Hagner, referred by him to Mr. Parker, and admitted." The Mr. Parker here mentioned is understood to have been chief clerk of the War Department, and who may probably have been acting Secretary at the time. The sum is charged in an abstract of disbursements by John H. Piatt, marked C, the admitted amount of which is \$6,699 76; and in the official statement made on the settlement of his accounts on the 4th December, 1813, the entry relating thereto is in this form: "For transportation, smoking meat, cooperage, driving cattle, ferriage, driving and attending pack horses and oxen, blacksmith's repair of wagons, *issuing* commissary's compensation, &c., &c., &c.—per abstract C, and vouchers, \$6,699 76."

In another abstract of disbursements by John H. Piatt, marked D, and applying to a period from November, 1813, to May, 1814, he has charged a further sum of \$270, as paid to Robert Piatt, on the 14th February, 1814, and the voucher for it is as follows:

"CINCINNATI, *February* 14, 1814.

"The UNITED STATES,

To ROBERT PIATT, Dr.

"For his services as assistant deputy commissary, from 1st October, 1812, to 14th February, 1813, four and a half months at \$60 per month, he finding his own horse and rations-----\$270 00

"Received from John H. Piatt, purchasing commissary, the sum of two hundred and seventy dollars in full for the above account.

(Signed duplicates.)

ROBERT PIATT.

Witness, H. Glenn."

A note in the handwriting of Mr. Hagner in this form, appears in the margin: "Should be from 1st October, 1813, to 14th February, 1814." The charge in this instance, it will be perceived, is for services "as assistant deputy commissary" and not "of purchases." The admitted amount of the charges in the abstract D, under the head of "contingencies," appears to be \$1588 37, and in the official statement, made on the settlement of the accounts of John H. Piatt, by the accounting officers in 1818, the entry in relation thereto, is as follows: "For amount of disbursements made by him between the 13th November, 1813, and the 31st May, 1814, being for express hire, printing advertisements, office rent, compensation to issuing commissaries, clerk hire, &c, abstract D, \$1588 37."

Payments are shown by the accounts of John H. Piatt, as Deputy Commissary of Purchases, to have been made by him to various persons for services as *issuing* commissaries, and to have been admitted to his credit, the same being unexposed to the objections which existed against allowances for services as *assistant* deputy commissary of *purchases*, as to which he himself received a compensation regulated, agreeably to law, by the amount of "public moneys disbursed by him." The first settlement of his accounts was made more than *thirty-eight years ago*, and the remarks on their examination, of the clerk who discharged the duty, are not now therewith, and were probably not preserved. The pencil note before alluded to, on the \$810 voucher, evinces that the wording of the charge in it did not escape attention; and explanation may have been furnished as to Robert Piatt's having been so employed, at times, as an *issuing* commissary, as to justify his being viewed as such; and that he was actually so re-

garded in the settlements, is evident from the entries in the official statements before cited. So far as concerns Robert Piatt, however, this is quite immaterial, the vouchers manifesting him *to have been fully paid*. The period of his services designated therein, does not agree precisely, it is observed, with that specified in his present demand; but the vouchers were made out when both parties *must have well known the dates at which those services began and terminated*. Literal copies of them are embodied in this report. The originals have necessarily to be retained on the files, but are subject to the inspection of the Committee, or any member of it, and also of the memorialist.

With great respect, your most obedient servant,

JNO. S. GALLAHER,
Auditor.

The Hon. CHAIRMAN

of the Committee of Claims, Senate.

IN THE SENATE OF THE UNITED STATES.

JANUARY 19, 1852.

Submitted, and ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT:

[To accompany bill S. 125.]

The Committee on Pensions, to whom was referred the memorial of Mary W. Thompson, beg leave to report :

That the memorialist is the widow of the late Lieutenant Colonel Alexander R. Thompson, who was killed at the head of his regiment on the 25th of December, 1837, in an action with the Indians in Florida, after faithfully serving his country for upwards of twenty-five years. On the death of her husband Mrs. Thompson received a pension, which was continued for five years, under the law of April 16, 1816 ; and in 1844 she asked of Congress a renewal and continuance of the pension, grounding her claim upon the long and valuable services of her husband, his death in battle, on several precedents, and on valuable services which she had herself rendered during his lifetime. Her memorial was presented to the House of Representatives, and on the 24th of May, 1844, the committee to whom it had been referred made a favorable report thereon, in which they say : " The memorial does no more than justice to the memory and gallant services of one of the most meritorious of those distinguished officers whose virtues and whose bravery have reflected so much credit upon the American army. During a service of about twenty-six years, Colonel Thompson was distinguished in every grade through which he passed. The committee have been furnished with testimonials in his behalf of the highest commendation, from the most distinguished officers of the army. Colonel Thompson has also been required to perform public services and agencies of a civil character, which were entirely out of the line of his official military duties, involving high responsibilities. To enable him to discharge these satisfactorily to the Government, it was necessary for him to have an assistant ; this assistance was rendered by the memorialist, by the devotion of much of her time for a series of years, or rather by giving her time to the Government, and thereby rendering important services." " The case of the petitioner is peculiar ; the services of her husband were such as are rarely if ever rendered ; and the circumstances of his death, in a ' war wherein no glory was to be gained—a war of suffering and disease,' wherein *all* was at hazard, and nothing to be gained—must be taken into consideration (in the opinion of the committee) in estimating the compensation to be allowed."

In 1848, the memorial was again presented to the House of Representa-

tives, and again a favorable report was made on the 18th of May of that year, in which the committee made, as a part of their own report, that of the 24th of May, 1844. The report of May, 1848, sets forth: "That Colonel Thompson was a most gallant officer, and extremely useful in the service, as well in the management of his corps in action and in camp, his personal bravery in conflict, and in his instruction of the officers and troops under his command, in preparing them for their duties in the service, while, at the same time, he performed other duties not pertaining to his station, in which he was assisted by his wife, the memorialist, who thus gave her services to the government in the exercise of duties important to the country, and which did not pertain to her or to her husband. These facts are most fully sustained by a letter of Major General Gaines, and from other evidences which have been presented to your committee."

The committee, in view of the facts presented to them, have reported a bill providing a pension for the memorialist during her widowhood.

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1852.

Ordered to be printed.

Mr. UPHAM made the following

R E P O R T :

[To accompany bill S. No. 130.]

The Committee on the Post Office and Post Roads, to whom was referred the petition and memorial of John T. Sullivan, beg leave to report :

That they have had the subject under consideration, and have adopted the report made in the case at the first session of the thirty-first Congress, and report the accompanying bill for the relief of the petitioner.

IN SENATE, August 9, 1850.

The Committee on the Post Office and Post Roads, to whom was referred the petition and memorial of John T. Sullivan, beg leave to report :

That your committee have thoroughly examined the case of the memorialist, and find that all the allegations contained in the petition are substantially correct. The contract was made, as represented, with the then Postmaster General, on the 27th April, 1839; and such contract was not only fully sanctioned by law and demanded by expediency, but was effected on terms most favorable to the department. The delays in the execution of the contract are to be attributed exclusively to the department, which was laudably desirous to render the compilation as full and perfect as possible, and thus to avoid the expenses incident to a new publication of an enlarged edition. The motive was a commendable one, and Mr. Sullivan freely contributed to fulfil the wishes of the department. In this he has subjected himself to an increase of labor and additional expenses, for which he is justly entitled to remuneration. His claim, upon these grounds, is, in the estimation of the committee, both just and reasonable, and ought to be paid without hesitation or difficulty. The committee, therefore, recommend that provision be made for its payment, and for that purpose report the accompanying bill.

Hamilton, *print.*

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1852.

Submitted, and ordered to be printed.

Mr. MALLORY made the following

R E P O R T :

[To accompany bill S. No. 131.]

The Committee on Naval Affairs, to whom was referred the memorial of Joseph Gideon, praying to be paid the difference between the compensation of a captain's clerk and an acting purser of the United States store-ship Fredonia, has had the same under consideration, and report :

That Joseph Gideon was duly appointed by the commander of the store-ship Fredonia an acting purser on board, and faithfully executed all the duties of purser in the Gulf of Mexico, and on the Pacific station between the 18th day of December, 1847, and the 16th day of May, 1848—and between the 8th day of June, 1848, and the 18th day of January, 1851.—He, at the same time, executed the duties of captain's clerk, for which he has received compensation. The Committee deems him entitled to be paid as purser, and report a bill accordingly.

Hamilton. print.

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1852.

Ordered to be printed.

Mr. MALLORY made the following

REPORT:

[To accompany bill S. No. 132.]

The Committee on Naval Affairs, to whom was referred the memorial of John O. Means, asking compensation as purser of the United States brig Dolphin, has had the same under consideration, and report:

That Mr. Means, being captain's clerk of the United States brig Dolphin, stationed on the coast of Africa, was, in April, 1846, appointed by Captain Skinner, commander of the African squadron, an acting purser to fill a vacancy created by the death of Purser Spencer. A purser was required by the vessel, and Captain Skinner had authority to confer the acting appointment upon Means, who entered upon his duties on the first of May, 1846, and continued to discharge them well and faithfully until the month of November, 1847. Upon receiving his appointment as acting purser of the Dolphin, he resigned his clerkship, and this post was at once filled by another person, who received the compensation incident to it; and Mr. Means neither received the pay as clerk nor as purser. The committee deems him entitled to the usual compensation as purser, and report a bill accordingly.

To the Senate and House of Representatives of the United States in Congress assembled:

The undersigned respectfully presents the following memorial: In November, 1845, the undersigned sailed for the west coast of Africa as captain's clerk of the United States brig Dolphin, John Pope, Esq., commander.—When the vessel had been five months on the station, a vacancy occurred in the grade of pursers in the African squadron, by the death of J. C. Spencer, jr., purser of the United States ship Marion. The services of a purser being required, Commodore Skinner exercised the authority vested in him, and made a temporary appointment to fill the vacancy. Purser Doran, of the Dolphin, was transferred to the Marion, and the undersigned received an appointment from Commodore Skinner to perform the duty of purser on board the Dolphin, till further orders from the Navy Department, or the commanding officer of the squadron.

The undersigned thereupon resigned the appointment of captain's clerk,
Hamilton, *prim.*

and accepted that of acting purser of the Dolphin. An order was then given by the Commodore to the former purser, Mr. Doran, "to transfer the accounts of the officers and crew of the Dolphin—also, the clothing and other property in the Purser's Department of that vessel to Mr. J. O. Means, who is appointed to perform the duty of purser for the time being." This was done, and receipts were signed by the undersigned and officially approved by Commodore Skinner.

On the 1st of May, 1846, the undersigned accordingly entered upon the performance of duty as acting purser of the United States brig Dolphin, and so continued during the remainder of the cruise, which lasted till November, 1847. In the discharge of official duty, the undersigned made requisitions and gave receipts in his own name, for provisions, small-stores and clothing, and issued the same as the necessities of the vessel required. Drafts were drawn in his own name, as acting purser, both upon Baring & Brothers, and upon the Hon. Secretary of the Navy; and the drafts were all duly and promptly honored, and the money so received was paid out for the use of the vessel or for other vessels of the squadron.

The undersigned was recognized on board the Dolphin, and by the commanding officers of the squadron as acting purser, and in every respect treated as such, and compelled to wear a uniform, and to live at an expense corresponding to this rank. Commodore Skinner stated to Commander Pope, in his presence, that the undersigned was to be regarded as the purser of the vessel, and that, of course, as he supposed, was entitled to draw pay as such. It was in full confidence of this expectation, and in good faith that the expectation would be realized, that the undersigned declined an offer to join the Mediterranean squadron, and relinquished the purpose of returning to the United States when an opportunity occurred; and continued, at great exposure of health and of life, on the pestilential coast of Africa.

The appointment which was conferred upon the undersigned by Commodore Skinner, was transmitted to the Honorable Secretary of the Navy within two months; and the fact stated, that the undersigned was to discharge the duty till "farther orders should be received from the Department." Communications were made to the undersigned from the Navy Department repeatedly, in relation to the accounts of the Dolphin; but no intimation was given that his appointment was revoked or considered null. When the vessel was first ready to return to the United States, however, on the 31st of July, 1847, fifteen months from the date of the appointment, the undersigned learned from the Navy Department for the first time, that by the strict construction of the law, he was not entitled to draw pay as purser. As another person had been appointed captain's clerk meanwhile, and had drawn pay as such, with the approval of the Navy Department, it thus appeared that the undersigned could not receive any compensation for his services.

In consequence of an appointment from the commander-in-chief of the naval forces on the coast of Africa, and in obedience to orders issued in conformity thereto, the undersigned has become responsible for large quantities of public stores and for large sums of money. The various pursers, navy agents and store-keepers, upon whom the undersigned has made requisitions, hold nothing but his personal receipts as vouchers for issues of public property and for payments of money; and their accounts cannot be settled, unless the signature of the undersigned as acting purser is recognised by law.

For nearly two years the undersigned has faithfully discharged the arduous and responsible duty of purser in the navy, for which, it would seem, by the strict construction of the law, he can receive no compensation whatever. The position which was exchanged for that of acting purser, was immediately filled by the appointment of another person, and the salary attached to it was, of course, drawn by him. So that the undersigned is allowed no emolument: and is not even reimbursed for the necessary expenses of service as an officer of the navy for nearly two years.

The official papers on file in the Navy Department, substantiate the facts herein set forth.

With the approbation of the Honorable Secretary of the Navy, the undersigned presents this memorial for the consideration of the Congress of the United States; and respectfully requests that a special law may be enacted, authorising the accounting officer of the Treasury to settle the accounts of the undersigned, for the purposes above named, as acting purser of the United States brig Dolphin, and to allow him pay accordingly until he passed his final account current and was relieved from duty.

JOHN OLIVER MEANS.

WASHINGTON CITY, *January 11, 1848.*

NAVY DEPARTMENT,
January 21, 1848.

SIR: I have the honor to acknowledge the receipt of your letter of the 17th inst., enclosing the memorial of J. O. Means, and requesting to be informed "if there is any objection to the allowance of his prayer."

The claim of Mr. Means is equitable and would have been paid by the Department but for provisions of law which were considered as prohibiting the allowance. Similar claims for compensation for the performance of service on foreign stations, under acting appointments rendered necessary by the exigencies of the service, have been presented and disallowed, in consequence of the construction given to the act of August 4, 1842, "making appropriations for the naval service." I have the honor to transmit herewith the papers relating to the claim of Mr. Fawns, an acting purser, and also a copy of a letter from the Fourth Auditor of the Treasury, in relation to the claim of Charles W. Babbit for pay as acting carpenter.

Such appointments of acting officers have been made without a knowledge, on the part of the commanding officers abroad by whom they were made, that the then recent act of 1842 would be construed to withhold pay for the service. In future it is supposed that no such appointments will be made under expectation of pay, without the previous approval of the Department, and that will not be given unless the law justifies it. The cases are not numerous. Mr. Means, Mr. Fawns, who did duty on board the Bainbridge, and Mr. Hollins, on board the Shark, are believed to be the only acting pursers.

The Department approves of the opinion of the Auditor, that it would be a saving of time and trouble to Congress if a general act should be passed providing that the proper accounting officers of the Treasury be authorized and directed to audit and settle the accounts of persons who have, since the 4th of August, 1842, performed service as officers of the navy on foreign stations, under temporary or acting appointments made by commanding officers on such stations, and to allow to such acting officers the pay and emoluments

of the grade in which they performed service, the amounts found due to them respectively to be paid out of any money in the Treasury not otherwise appropriated ; *provided*, that claims preferred under this act shall not be settled without the previous approval of the Secretary of the Navy.

If this suggestion should not be approved by the committee I would respectfully recommend to their favorable consideration the claims of the several individuals referred to by name in this communication.

The memorial of Mr. Means is herewith returned.

Very respectfully, sir, your obedient servant,

J. Y. MASON.

HON. D. L. YULEE,

Chairman of the Committee on Naval Affairs, U. S. Senate.

TREASURY DEPARTMENT, FOURTH AUDITOR'S OFFICE,

February 21, 1851.

SIR : A memorial presented to Congress by John O. Means, praying the passage of an act granting him the pay of a purser for the period during which he performed the duties of that grade on board the United States ship *Dolphin*, in the years 1846 and 1847, having been referred to this office, with the request that such information may be furnished in regard to his claim as may be useful to the Committee on Naval Affairs, I have the honor to state that the material facts of the case, so far as I am acquainted with them, are these :

Mr. Means was captain's clerk on board of the *Dolphin*. The purser of one of the other vessels of the squadron having died, the purser of the *Dolphin* was ordered to her, and Mr. Means received from the commander of the squadron an acting appointment as purser of the *Dolphin* ; whereupon it appears that he resigned his office as captain's clerk, and another person was appointed to that place. The regulations of the navy authorize the commander of a squadron on a foreign station to give acting appointments to fill vacancies which may be occasioned by death or other circumstances, requiring him, however, to take the earliest opportunity of communicating the circumstances to the Secretary of the Navy, with his reasons for making such appointments. By this rule the commander of a squadron is empowered to fill vacancies from inferior grades in the service, but not to make officers of mere citizens. The commander of the squadron, therefore, in which Mr. Means was a captain's clerk, could order him to perform the duties of a purser, but he could not thereby alter his pay consistently with the existing laws, nor could Mr. Means acquire a right to additional compensation by a resignation of his clerkship. It appears that Commodore Skinner, who commanded the squadron to which the *Dolphin* belonged, informed the Secretary of the Navy, by a letter dated on the 1st of May, 1846, of the acting appointment which he had given to Mr. Means, and on the same day the latter entered upon the duties of the office. In April, 1847, it became necessary for this office to know whether Mr. Means was recognized by the Secretary of the Navy as an acting purser, and, upon inquiry at the Department, information was received that he was not. The office accordingly held no correspondence with him in that character, but addressed its letters relating to the purser's business to the captain of the vessel, who was requested, in a letter of the 9th of April, to apprise Mr. Means that he was not recognized by the Secretary of the Navy as an acting purser, and on

the 13th of the same month a letter was written to him from the Navy Department communicating the same intelligence. This letter he states that he received on the 31st of July, 1847. He continued to perform the same duties, however, until the arrival of the Dolphin in the United States, which was about the 22d of November of that year. In February, 1848, subsequently to the date of his memorial, his account of receipts and disbursements was settled by the accounting officers, by which a balance was shown to be due from him to the Government of \$2,956 18. This balance included the sum of \$2,457 02, which he charged for his services as purser from the 1st of May, 1846, to the 22d of November, 1847, and the additional sum of \$258 57, for the preparation and settlement of his account, which claims were disallowed, upon the ground that even if his appointment would otherwise have entitled him to the compensation of a purser, he could not be paid, in consequence of his not being included in the limited number of officers of that grade permitted by the act of August 4th, 1842. He unquestionably performed all the duties of a purser from the 1st of May, 1846, to November 22d, 1847, under an appointment which he doubtless thought sufficient, at least until the 31st of July, 1847; and as he resigned his clerkship when he began to act as purser, he has received no pay whatever for the time I have specified. It may be proper for me to add, in reference to his claim of \$258 57 above mentioned, that the duty pay of permanent pursers is, by a regulation of the Navy Department, continued sixty days after their detachment, for the preparation and settlement of their accounts, (that is to say, they are allowed the difference between sea pay and leave of absence pay for that period,) and that this allowance has been extended to commanding officers who have acted as pursers of their vessels; but that the pay of a citizen acting as purser has never been continued beyond the period at which the crew of the vessel has been paid off and the officers detached. A person thus situated has been allowed his travelling expenses to Washington, when his personal attendance was necessary upon the settlement of his account, and the sum of one dollar and fifty cents per diem while thus attending; but I do not recollect that Mr. Means' presence was necessary when his account was under examination, or if it were, it could only have been for a few days, not exceeding a week; and the usual allowance might, in that case, have been obtained by application to the Secretary of the Navy.

The memorial you enclosed to me is herewith returned.

I have the honor to be, sir, very respectfully, your obedient servant,

H. O. DAYTON.

Hon. D. L. YULEE,

Chairman of the Committee on Naval Affairs, U. S. Senate.

NAVY DEPARTMENT,
February 27, 1850.

SIR: I have the honor to acknowledge the receipt of your communication of the 25th, in relation to the claim of Mr. J. O. Means.

Commodore Skinner, in a letter dated May 1, 1846, informed the Department that he had directed Mr. Means to perform the duty of purser on board the United States ship Dolphin, under the supervision of Commander Pope. Shortly after the receipt of this letter, Commodore Skinner was relieved from the command of the squadron on the coast of Africa, and no

letter was addressed to him by the Department in relation to the appointment of Mr. Means.

I transmit, herewith, a copy of a letter addressed by the Department to Commodore Read, informing him that Mr. Means could not "be recognized as a purser or paid as such." I enclose also a copy of a communication, dated January 21, 1848, from this Department to the Committee on Naval Affairs of the Senate, in relation to the claim of Mr. Means.

The papers which accompanied your letter are herewith returned.

I am very respectfully, your obedient servant,

WM. BALLARD PRESTON.

Hon. D. L. YULEE,

Chairman of Committee on Naval Affairs, U. S. Senate.

NAVY DEPARTMENT,

April 13, 1847.

SIR: Your several despatches, dated 11th December, 1846, 1st and 10th February, 1847, with their respective enclosures, have been received since my letter of the 7th instant.

Several drafts have been drawn upon the Department by Mr. J. O. Means, who signs himself as acting purser. His drafts have been honored, but under the law, Mr. Means cannot be recognized as a purser, or paid as such, of which he has doubtless been informed by the Fourth Auditor. He is regarded only as the clerk to the commanding officer of the vessel to which he is attached, who is of necessity responsible in such cases.

I am very respectfully, your obedient servant,

J. Y. MASON.

Commodore GEO. C. READ,

Commanding African Squadron.

NAVY DEPARTMENT,

January 21, 1848.

SIR: I have the honor to acknowledge the receipt of your letter of the 17th instant, enclosing the memorial of J. O. Means, and requesting to be informed "if there is any objection to the allowance of his prayer."

The claim of Mr. Means is equitable and would have been paid by the Department, but for provisions of law which were considered as prohibiting the allowance. Similar claims for compensation for the performance of service on foreign stations, under acting appointments rendered necessary by the exigencies of the service, have been presented and disallowed in consequence of the construction given to the act of August 4, 1842, "making appropriations for the naval service." I have the honor to transmit, herewith, the papers relating to the claim of Mr. Fawns, an acting purser, and also a copy of a letter from the Fourth Auditor of the Treasury, in relation to the claim of Charles W. Babbit, for pay as acting carpenter.

Such appointments of acting officers have been made without a knowledge on the part of the commanding officers abroad, by whom they were made, that the then recent act of 1842 would be construed to withhold pay for the service. In future, it is supposed that no such appointments

will be made under expectation of pay, without the previous approval of the Department, and that will not be given unless the law justifies it. The cases are not numerous. Mr. Means, Mr. Fawns, who did duty on board the Bainbridge, and Mr. Hollins, on board the Shark, are believed to be the only acting pursers.

The Department approves of the opinion of the Auditor, that it would be a saving of time and trouble to Congress, if a general act should be passed providing that the proper accounting officers of the Treasury be authorized and directed to audit and settle the accounts of persons who have, since the 4th of August, 1842, performed service as officers of the navy on foreign stations, under temporary or acting appointments made by commanding officers on such stations, and to allow to such acting officers the pay and emoluments of the grade in which they perform service; the amounts found due to them respectively to be paid out of any money in the Treasury not otherwise appropriated; provided, that claims preferred under this act, shall not be settled without the previous approval of the Secretary of the Navy.

If this suggestion should not be approved by the committee, I would respectfully recommend to their favorable consideration the claims of the several individuals referred to by name in this communication.

The memorial of Mr. Means is herewith returned.

Very respectfully, sir, your obedient servant,

J. Y. MASON.

Hon. D. L. YULEE,

Committee on Naval Affairs, Senate.

NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, &c.

February 25, 1850.

SIR: I have the honor to acknowledge the receipt of your communication of the 22d inst., with the accompanying memorial of Mr. Means, and a letter from the Fourth Auditor of the Treasury.

As explanatory of the transaction which is made the subject of the memorial, I enclose copies of the communications made as commanding officer of the African squadron to Commander Pope, Mr. Doran and Mr. Means. The circumstances which gave rise to the transaction, was the death of Mr. Spencer, of the Marion, leaving a sloop of war without a purser. As she was a vessel of larger displacement, I considered it advisable for the public interest to transfer a commissioned purser to that vessel, and direct Mr. Means, captain's clerk of the Dolphin, to do the duty, under the supervision of Commander Pope, as you will perceive by the correspondence. The Hon. Secretary of the Navy was duly informed by letter, dated same day, of the transaction and particulars. The resignation of the place of captain's clerk by Mr. Means, was entirely voluntary, and never contemplated by the undersigned,

It was expressly understood by Commander Pope, that should it be necessary to draw money, it must be done in his own name. Nor did Mr. Means draw until several months after I had been relieved from command of the station, as appears from the books of the Fourth Auditor.

As the Hon. Secretary of the Navy, however, was duly informed of the order and its necessity, and permitted it to continue in force, I should sup-

pose Mr. Means was fully entitled to the pay of purser. The duty, I have no doubt, from his character and ability, he discharged faithfully.

I am, sir, respectfully, your obedient servant,

CHAS. WM. SKINNER.

To Hon. D. L. YULEF,
U. S. Senate.

UNITED STATES SHIP JAMESTOWN,
Porto Praya, April 29, 1846.

SIR: You will transfer the accounts of the officers and crew of the United States brig Dolphin, also the clothing and other property in the purser's department of that vessel, to Mr. J. O. Means, who is appointed to perform the duty of purser, for the time being.

I am, respectfully, your obedient servant,

CHAS. WM. SKINNER,

Commodore Commanding U. S. Naval Forces West Coast of Africa.
Purser E. C. DORAN,
United States Navy.

UNITED STATES SHIP JAMESTOWN,
Porto Praya, April 28, 1846.

SIR: I have directed, in conformity with your wishes, Mr. J. O. Means, at present your clerk, to perform the duty of purser of the Dolphin, under your supervision, until further orders from the Department, or the commanding officer of the African squadron.

I am respectfully, sir, your obedient servant,

CHAS. WM. SKINNER,

Commodore Commanding U. S. Naval Forces West Coast of Africa.
Commander JOHN POPE,
Commanding United States Brig Dolphin.

UNITED STATES SHIP JAMESTOWN,
Porto Praya, April 28, 1846.

SIR: You will perform the duty of purser of the United States brig Dolphin, under the supervision of Commander Pope, until further orders from the Navy Department, or the commanding officer of the African squadron.

I am, respectfully, your obedient servant,

CHAS. WM. SKINNER,

Commodore Commanding U. S. Naval Forces West Coast of Africa.
Mr. J. O. MEANS,
Captain's Clerk United States Brig Dolphin.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1852.

Ordered to be printed.

Mr. FOOT submitted the following

R E P O R T :

[To accompany bill S. No. 144.]

The Committee on Pensions to whom was referred the petition of William Miller, report :

That two reports have already been made from the Committee on Pensions favorable to the petitioner ; one on the 7th of February, 1849, the other on the 31st of July, 1850 ; both accompanied by bills for his relief. Those reports are believed to be a fair representation of the evidence furnished, and the committee adopt them as a part of this report. They recommend the passage of the accompanying bill.

IN SENATE—July 31, 1850.

The Committee on Pensions, to whom was referred the petition of William Miller, beg leave to report :

That the petition of said Miller was first presented to the Senate on the 10th of February, 1845, and has been taken up and referred every year since ; that on the 7th of February, 1849, there was a report made in favor of the petitioner, accompanied by a bill for his relief. According with the statements and views of that report, the committee adopt the same, and also report a bill for the relief of the petitioner, who, as it appears from additional evidence furnished during the present session, has been a pauper, and supported by public charity, for the last ten years.

IN SENATE—February 7, 1849.

The Committee on Pensions, to whom was referred the petition of William Miller, praying to be allowed a pension on account of disability incurred by reason of exposure while in the military service of the United States, during the last war with Great Britain, having attentively examined the evidence accompanying the petition, report :

That the petitioner enlisted in April, 1814, as a private in the 21st regiment of infantry, and in July following crossed with the regiment from Black Hamilton, print.

Rock into Canada : that he assisted at the capture of Fort Erie, and afterwards at the battles of Chippewa, Queenstown Heights and Bridgewater : but having contracted a disease in the head, producing frequent fits of epilepsy, to which he had never before been subject, he was left, at the close of that brilliant campaign, in the hospital at Williamsville, in a state of disability from which he has never recovered.

It is proved by the depositions of witnesses, who have known the petitioner from his boyhood, that he entered the army with a robust constitution, and in vigorous health. His attending physician in the hospital, Dr. James Bates, then an assistant surgeon in the army, and since a representative in Congress from the State of Maine, expresses his belief that the disability of the petitioner was occasioned by exposure during the campaign, which he states to have been one of the severest in that section of the army, that was experienced during the war, and that many hundreds thereby irrecoverably lost their health. The epileptic fits, which first occurred at the hospital at Williamsville, are found to have periodically returned, accompanied with vertigo and other symptoms of continued disease in the head, by which he has become totally disabled from supporting himself by manual labor. Other respectable physicians, whose depositions accompany the petition, concur in the opinion expressed by the hospital surgeon, that this disability is owing to the disease contracted by exposure while in the army. The committee are of opinion that the facts stated in the petition are substantially proved, and therefore report a bill for the relief of the petitioner.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1852.

Ordered to be printed.

Mr. BAYARD submitted the following

R E P O R T :

[To accompany bill S. No. 145.]

The Committee of Claims, to whom was referred the petition of Ezra Williams, report :

That the claim of the petitioner was investigated by the Committee of Claims of the first session of the thirty-first Congress, and a favorable report made thereon, accompanied by a bill for his relief.

The facts of the case are correctly and fully stated in that report, which is now adopted by the committee, and made a part of this report. The claim is for services of real value, not within the line of duties of the petitioner, which required in their performance incessant and exhausting labor.

The committee are of opinion that he is entitled to relief, and report the accompanying bill for that purpose.

IN SENATE, April 5, 1850.

The Committee of Claims, to whom was referred the memorial of Ezra Williams, report :

That the petitioner claims compensation for services rendered by him, in preparing an alphabetical index to the numerical register in the military bounty division of the General Land Office. He states that he has been employed as a clerk in that office since September, 1847, and that he had in charge the registration and preparation for transmission about the whole issue of certificates or warrants, under the act of February 11, 1847, besides a considerable portion of the correspondence of the bureau relating thereto; that his ordinary duties required incessant application for about two hours daily, over and above the regular hours of the Treasury Department; that in the early part of the year 1848, the necessity of such a register became so apparent, that the Commissioner of the General Land Office gave orders to have it prepared; that the books to be indexed were in constant use during office hours, and therefore the work could not be done during such hours; and the memorialist, having made the entries exclusively, was directed by the commissioner, with the approbation of the President of the United States, to prosecute the work *out of office hours*, which he diligently did for about eight months, working frequently till midnight.

It appears that this claim was submitted to the Committee of Ways and Means of the House of Representatives at the last session of Congress, and that that committee directed their chairman to report as an amendment to the civil and diplomatic appropriation bill, an appropriation of five hundred dollars in payment of this claim. The amendment was adopted by the House without opposition; but the Finance Committee of the Senate reported against it, not on account of the want of merit in the claim, but because they were opposed to engrafting upon that bill an appropriation for services not previously authorized by law; and it was therefore stricken from the bill.

In regard to the merits of this claim, Judge Young, the late commissioner, in a letter to your committee, says:

“My reasons for authorizing the work were, that it would greatly abridge the labor, and facilitate the transaction of the public business in the bounty-land division of the General Land Office, and would, moreover, insure a degree of accuracy that could not be expected without it.

“The reasons which appeared to justify the employment of Mr. Williams were, that as his books were in constant use for reference, &c., the work could only be prosecuted out of office hours; and that, having made nearly every entry, he could accomplish it in a shorter period and with greater accuracy than another.

“The circumstances were stated to the President, who approved of the measure, and authorized a reference to himself, should it be deemed at any time necessary to establish the claim of Mr. Williams to compensation for the service.”

Judge Young concludes his letter by saying: “I sincerely hope that the appropriation will be made, it being an act of simple justice to a faithful and indefatigable public servant, who has earned it by the sweat of his brow, in obedience to my instructions, with the knowledge and approval of the President. These facts, in my opinion, impart to the transaction all the solemnity of a contract.” The late commissioner is also of the opinion that five hundred dollars is a moderate allowance for the services.

The committee is of opinion that the petitioner is entitled to relief, and report the accompanying bill for that purpose.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1852.

Ordered to be printed.

Mr. DODGE, of Wisconsin, made the following

R E P O R T :

[Considered by unanimous consent, and concurred in.]

The Committee on Commerce, to whom the memorial of Charles S. Jackson was referred, praying certain allowances as deputy-inspector and marker at Philadelphia, report :

That they have carefully examined the claim of Charles S. Jackson ; that he was in the years 1837, 1838, 1839, 1840, and 1841, a deputy-marker and inspector at the port of Philadelphia, and as such officer, rendered his accounts to the Treasury Department. From an examination of his account against the United States, he states a balance in his favor of \$2,073 17, for services not performed in his capacity as deputy-marker and inspector. The first Auditor of the Treasury at that time, Jesse Miller, gave his decision against the legality of the account of Mr. Jackson, as marker and deputy-inspector. It appears from the auditor's letter, that his account for marking coffee and cocoa could not be sustained ; that the act of Congress of 1838 did not apply to his case, and that his demand could not be allowed. From a careful examination of the memorial in question, the committee is brought to the conclusion, that the settlement and adjustment of accounts of this character exclusively belongs to the proper accounting officers of the Government ; and asked to be discharged from the further consideration of the memorial in question.

Hamilton, Printer.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1852.

Ordered to be printed.

Mr. HAMLIN made the following

REPORT:

The Committee on Commerce, to whom was referred the memorials of the Charleston Chamber of Commerce, the port-wardens of Charleston, and the Charleston board of trade, South Carolina, all asking that further provision may be made by law for the relief of American seamen in foreign ports, have had the same under consideration, and have directed me to submit the following report:

The memorials all refer, in particular, to the sickness and suffering of American seamen "in the ports of Havana, Rio de Janeiro, all the ports on the coast of Africa, and the ports of the East and West Indies."

The memorialists aver and suppose that there is a large sum of money now in the treasury of the United States, exceeding a million of dollars, which has accumulated from the monthly sum of twenty cents paid by the seamen, and from uncalled-for prize-money. From that fund, supposed to exist by the memorialists, they pray that further provision be made for the relief of sick seamen in foreign ports.

Upon examination, it is found that no such fund exists; and in the opinion of your committee, our consular agents are by law clothed with full power to render such aid to sick and disabled seamen, in foreign ports, as the annual fund for that purpose will afford the means. It is not seen how the object desired can be effected, except by a direct appropriation from the Treasury. That the memorialists do not ask; such has not been the policy of the Government. Your committee therefore ask to be discharged from the further consideration of the subject.

Hamilton, printer

IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1852.

Ordered to be printed.

Mr. UPHAM submitted the following

REPORT:

[To accompany bill S. No. 147.]

The Committee on the Post Office and Post Roads, to whom was referred the petition of Ira Day, of Vermont, beg leave to report :

That they have had the subject under consideration, and for the facts in the case refer to a report made upon the claim of the petitioner, at the first session of the thirty-first Congress, in the words and figures following, viz :

IN SENATE.—January 30, 1850.

The Committee on the Post Office and Post Roads, to whom was referred the petition of Ira Day, of Vermont, beg leave to report :

That they have had the subject under consideration, and find that two bills have heretofore been reported for the relief of the petitioner ; one in 1839 and the other in 1840. The facts in the case are fully set forth in Senate report No. 86, third session of the twenty-fifth Congress, in the words following : “ James Barker and others were contractors for transporting a daily mail for four years from Boston, in the state of Massachusetts, to Royalton, Montpelier, and Burlington, (the great depot of navigation on Lake Champlain,) being the great mail route from Boston to Montreal, for the sum of \$12,250 per annum, commencing on the 1st day of January, 1833, and ending in January, 1837. In the month of October, 1834, the Postmaster-General ordered the mail to be discontinued one day in a week on that part of the route from Royalton to Burlington ; which part of the route, for the transportation of the mail, was assigned by the contractors to the petitioner. Under the order aforesaid of the Postmaster-General, the mail from Boston arrived at Royalton on Saturday evening, and remained over until the Monday morning following.

“ The inconvenience to the public by this order appears to have been so great, that the postmasters on the route and other citizens solicited and urged the petitioner to continue the transportation of the mail every day, notwithstanding said order of the Postmaster-General. He did so ; and by so doing, the line was continued unbroken, and the mail was transported

regularly from Boston to the capital of Vermont, and thence to Burlington, and *vice versa*, every day in the week. The petitioner, therefore, claims the sum of \$1,008.90, being the sum withheld from him by the Postmaster-General on account of the order for discontinuing the transportation of the mail aforesaid."

The committee are well satisfied, from the proof filed in the case, that the order of the Postmaster-General, if it had been carried out, would have occasioned great inconvenience to the public. It would have delayed the mail thirty-six hours on one of the most important and productive routes in that section of the country. The order, though peremptory on its face, was, no doubt, designed as a temporary measure for the relief of the department in its then embarrassed condition. This is apparent from the fact, that after the expiration of the petitioner's contract, the department ordered a daily mail upon the route. The service, then, having been performed at the request of the postmasters and other citizens on the route, and to the great convenience of the public, should in justice and equity be paid for. The committee, therefore, report a bill for the relief of the petitioner.

It also appears that the mail was carried by the petitioner, at the request of the Postmaster-General, after the contract had expired, to wit: on the first of January, 1837, to the first of July of the same year. The one-seventh part of the amount of the original contract for performing that service was also retained by the Postmaster-General, and is included in the bill.

The committee further report, that they have been unable to find any power vested in the Postmaster-General authorizing him to make the order of October, 1834, discontinuing the mail one day in the week, on that part of the route from Royalton to Burlington. The only clause in the contract authorizing the Postmaster-General in any way or manner to interfere with it, is in the words following, to wit:

"It is mutually understood by the contracting parties, that if the route, or any part of the route herein mentioned shall be discontinued by act of Congress, or, in the opinion of the Postmaster-General, becomes useless; or if a line of stages or steamboats shall be established on the whole or any part of it, where the mail is not so carried under this contract, then this contract, or such part of it, shall cease to be binding on the Postmaster-General, he giving notice of such event, and making allowance of one month's extra pay." Under this clause in the contract, the Postmaster-General had no power to discontinue the mail one day in the week, while the road over which it was contracted to be carried remained a mail-route. When a route, or any part of it, shall be discontinued by act of Congress, or, in the opinion of the Postmaster-General, becomes useless, &c., he may put an end to the contract, so far as it relates to that part of the road which has been discontinued as a mail route, by giving notice of such event, and making allowance of one month's extra pay. The authority of the Postmaster-General to exercise the power above mentioned, is derived from the contract, and no other source. He can do just what the contract authorizes him to do, and nothing more. A clause has been introduced into the more recent contracts, authorizing the Postmaster-General to discontinue or curtail the service contracted to be performed on the route, whenever the

public interests require such discontinuance or curtailment. This clause in the new form of contracts empowers the Postmaster-General to do what he had no authority to do under the old form of contracts : he may now reduce a contract for transporting a daily mail to a tri-weekly or a semi-weekly mail ; under the old form of contract he had no such power. From the best consideration the committee have been able to give the subject, they are clearly of the opinion that the sum claimed by the petitioner, together with the interest thereon, from the 1st day of July, 1837, to the present time, is justly, equitably, and legally his due. They therefore report the accompanying bill for his relief.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1852.

Ordered to be printed.

Mr. SEWARD submitted the following

REPORT:

[To accompany bill S. No. 143.]

The Committee on Commerce, to whom was referred several memorials of merchants, underwriters, and others, praying for an exploration and reconnaissance of such parts of the China seas, Straits of Gasper, and Java sea, as lie directly in the route of vessels proceeding to and from China, submit the following report:

That in the summer of 1848, Captain Roys, of the whale ship Superior, penetrated the Arctic ocean through Behring's Straits, and encountered all the dangers of a Polar sea unexplored, but that his enterprize was richly rewarded, and that, since that time, a large and profitable fishery has been created in the regions thus explored. That in this trade, during the last two years, there have been employed two hundred and ninety-nine ships, eight thousand nine hundred and seventy seamen; and that the value of the ships and cargoes was seventeen and a half millions of dollars, and of the oil and whalebone obtained about nine millions; but that the disasters attending the trade, had been unusually calamitous. Seven vessels were wrecked within the last year, and there are painful reports of others.

There is no chart of these seas, and it is manifestly the interest and duty of the United States to protect and foster so great a commercial enterprize, that the committee do not think it necessary to enlarge upon this subject.

The trade with China and other Oriental States, has received a new impulse from the colonization of California by the United States, under circumstances singularly propitious, and steam navigation is already opening with certain prospects a great and enduring enlargement.

But it is known to all persons engaged in that commerce, that the seas traversed are full of perils of which there is no sufficient warning in existing charts or in the experience of navigators. Every consideration of commercial interest, of naval competition, and of humanity, enjoins upon the Government an exploration and reconnaissance of these seas also. A large island has been recently discovered (called Ousinia) in the way to Japan and northern China. It is supposed to be very fertile and densely inhabited, but no vessel has gone around the island and none touched its shores. It would be of incalculable benefit to the American trade, if this island should be found to contain a good harbor and a hospitable people.

The committee are of opinion that one or two small naval vessels, supplied with competent officers and seamen, could, without any great expense, complete an exploration and reconnoissance, and of those parts of the northern and southern seas before mentioned, which are the scenes of American traffic and enterprize. They could be employed during the short Polar summers in the Arctic ocean, and during the winters they could carry on their labors in the more southern seas.

The committee respectfully ask leave to report a bill upon the grounds contained in this report.

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1852.

Submitted, and ordered to be printed.

Mr. DOWNS made the following

R E P O R T :

[To accompany bill S. 137.]

Mr. Downs, from the Committee on Private Land Claims, to which was referred the petition of John Ervin, made the following report :

The petitioner represents and the evidence sustains his averment, that twenty-three years since he settled on and improved a tract of land in the Bastrop claim, in Louisiana, and has resided on and cultivated it ever since ; that long previously to his settlement this land had been sold by the grantee to Ballinger, who, after having made some improvements on it, abandoned it and left the country and has not been heard of since, nor has any agent or heirs appeared or been heard of to act for him ; that in consequence of this absence petitioner has not been able, as he intended to do, to purchase the title of said Ballinger, but that he has held peaceable and uninterrupted possession of it long enough to give him a title by prescription against all claimants, except the United States, under the laws of Louisiana ; that an act of Congress, passed at the last session (3d March, 1851) intended, among other things, to give a donation claim to such settlers for over twenty years, as he is, but that it has been decided not to embrace his case, because he has not a written title from Ballinger, holding under the original grantee ; that he was a pioneer in the wilderness when he settled this place, on which, by his own labor and that of his family raised on it, he has made considerable improvements ; that he is now old, and infirm, and poor, and not able to make other improvements if he fails to secure this, and prays that he may be confirmed in his title to said land, to the extent of six hundred and forty acres, the quantity granted by the act of 3d March, 1851, to other claimants under the grant who have occupied and cultivated the land for more than twenty years.

The committee are of opinion that his case comes within the spirit of the act of 3d of March, 1851, referred to in the petition, and other acts allowing donation claims to early settlers in remote frontier districts of country, and report a bill accordingly and recommend its passage, guarded in such a manner as not to affect the rights of others.

STATE OF LOUISIANA,)
Parish of Morhouse.)

Personally came and appeared before me, David Stewart, of the parish of Union, State of Louisiana, who being duly sworn according to law, saith :

Hamilton, printer.

that he has resided within the old parish of Onachitee, or in some of the new parishes which have been formed from its territory, for about fifty-two years; that deponent is well acquainted with John Ervin, who resides in the parish of Morhouse, (formerly part of the parish of Onachitee,) and has known him for twenty-nine years past; deponent is well acquainted with the place where said Ervin lives on the Bayou Bartholomew. Deponent well remembers a person named Joseph Ballinger, having formerly lived at the same place some fifty years ago. Ballinger had an improvement there. About forty years ago Ballinger left the country, and has never, to the knowledge of deponent, returned to this country since, nor has deponent ever heard what has become of him; no one, to the knowledge of deponent, has ever claimed to be his heir, nor has deponent ever heard of any one pretending to act in his behalf as agent or legal representative. Deponent is one of the oldest remaining inhabitants in the country, and was acquainted with most, if not all the old inhabitants. Deponent further saith that John Ervin has been settled and living upon the Ballinger tract aforesaid, for upwards of twenty years, has made a considerable improvement there, and has raised a respectable family, and has always been esteemed and looked upon by his neighbors as an honest and meritorious man.

his
DAVID × STEWART.
mark.

Sworn to and subscribed to before me, on the 20th day of October, A. D. 1851.

A. McIVER,
Justice of the peace.

To the Honorable the Senate and House of Representatives of the United States of America in Congress assembled.

The undersigned, inhabitants of the parish of Morhouse, in the state of Louisiana, respectfully beg leave to represent to your honorable bodies, that they are well acquainted with John Ervin, of the said parish and State, who has applied to Congress for an act of relief under the provisions of the act of the third day of March, 1851, relating to certain classes of private land claims in the Bastrop grant. Your memorialists have understood that by the rule of construction of the said act, adopted by the commissioners appointed by law to carry the same into effect, the claim of Mr. John Ervin would not be embraced.

Your memorialists knowing the claim of Mr. Ervin to be meritorious, that he has, from the best information in their possession, actually resided upon and cultivated the tract of land where he now resides for upwards of twenty years; that he has in all respects fulfilled the provisions of the act of third March, 1851, where the same has been in his power, and that the only deficiency which exists in his claim is the absence of a chain of proper title from the Baron de Bastrop or his vendees, which, from the absence of Joseph Ballinger and all his representatives from the country, and the total abandonment of the land by him and them, without the existence of any agent for near thirty years, from whom the same could be obtained; joined to the fact that by the existing laws of the State of Louisiana, Mr. Ervin

has acquired a title by prescription perfect against the said Ballinger and his heirs, and which in a legal contest with any, save only the Government of the United States, would be held paramount, presents in the opinion of your memorialists, a case for the liberal exercise of the power of Congress in the furtherance of his wishes. Your memorialists believing that the act of the third of March was intended to be liberal in effect, and to provide a home, by donation, to the respectable and hard-working pioneers of the country, and believing also that, under so general an act, cases of merit must necessarily occur which are not embraced in its provisions, respectfully recommend the passage of an act to enable Mr. John Ervin to be admitted to make proof of occupation and cultivation of the tract of land on which he lives, before the register and recorder of the land office at Monroe, Louisiana, for twenty years preceding the date of the said act of Congress of March 3, 1851, and that the production of paper title be dispensed with upon proof of a title by prescription against all other claimants than the Government of the United States, and for such and further relief as your honorable bodies may deem proper and just.

EDW. R. PARKER,
DANIEL NEWTON,
SYL. G. PARROUTZ,
JOHN V. ROBERTSON,
JAMES W. BOATNER,
M. L. GUILLE,
A. J. BOBO,
A. McIVER,
JOHN BOYD,
H. FAULK.

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1852.

Ordered to be printed.

Mr. JONES, of Iowa, submitted the following

REPORT:

[To accompany bill S. No. 150.]

The Committee on Pensions, to whom was referred the petition of Francis P. Gardiner, report:

That the petitioner is the widow of the late Captain George W. Gardiner, of the United States Army, who was killed by the Indians in the massacre of Major Dade's command, in Florida. She was left in destitute circumstances and enfeebled health, with two young children to support. Her father, Lieut. Abram Fowler, and her brother-in-law, Col. Fanning, both died in their country's service; and her only near male relative, a brother, was, at the date of her petition, on duty with his company in Mexico. Thus situated, she petitioned for a continuance of the pension which was allowed her under the act of July 4, 1836; and on the 20th of May, 1850, a bill for her relief was reported to the Senate. The committee have deemed it proper to report a similar bill now, and to recommend its passage.

Hamilton, print.

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1852.

Ordered to be printed.

Mr. WHITCOMB, from the Committee of Claims, submitted the following

REPORT:

[To accompany bill S. No. 152.]

The Committee of Claims, to whom was referred the petition of Mary B. Renner, made the following report:

It appears from the testimony in this case, that during the last war with Great Britain the petitioner's husband, and one Nathaniel H. Heath, under the firm of Renner & Heath, were extensively engaged at the city of Washington in the manufacture of rope and cordage for the navy, as well as for the community generally.

That when the city was threatened with invasion, they had on hand in the walk, near the navy yard, a large quantity of cordage, rope, and twine, suitable for the public use; and fearing the destruction of their property by the approaching enemy, they employed in ample season, a sufficient number of long-boats to remove all the stock from their manufactory beyond the enemy's reach, but the long-boats were taken from them and impressed into the service of the United States to remove Young's brigade across the Potomac by order of General Winder. They then obtained carts, but these were impressed by the Government to remove the books and papers from the public offices. As a last resort they hired wagons, but these were also impressed by the United States to remove public property, and though they at first remonstrated, they finally acquiesced in the principle that "private considerations must give way for the public good." Finding their utmost industry and vigilance, as exhibited in three energetic efforts to save their property by removal, thus frustrated by the Government, they were reluctantly compelled to leave it to its fate.

The enemy soon after entered the city, discovered the naval stores in the walk, and in burning these stores, mostly useful for the public service, burnt all the stock, implements, and buildings of the petitioners, comprising substantially their entire property. Of the liability of the Government to make compensation for at least a part of the loss occasioned by the conflagration, Congress made full admission on a former application for relief; the petitioners then being allowed \$19,803 60 towards their losses thus sustained.

That sum was awarded to petitioners under the act of Congress for that purpose, approved February 16, 1819, by the accounting officers of the Treasury Department, to whom the subject was by that act referred, and who were unable to make a larger allowance, notwithstanding the evidence, because they were restricted to that amount as the maximum, by the terms of the act itself.

The only question now is, whether Congress, in imposing the restriction in the act referred to, should not have placed it at a higher amount. The whole amount of the claim as first presented was \$31,510 75, which it was testified within two months after the burning, as from actual knowledge, was just, or rather that the amount named was in fact *under* its value. The committee who reported the former bill, stated in their report "that the petitioners have a reasonable and just claim on the Government for the removable part of their establishment, consisting of rope, spun yarns, and hemp, deducting therefrom what reasonably would have been the cost of transporting the same to a place of safety and back to the rope-walk after the danger ceased, and damage done to the materials by such removal, with *perhaps* some deduction from the prices at which the articles are charged." The Committee then proceeded to deduct twenty per cent., from the claim for the foregoing consideration.

It is now insisted on the part of the petitioner, that such property, from its very nature, would have been subject to little or no damage by removal; that two dollars per ton would have been an ample price for transportation at that time; that the prices affixed to the property in the petition for relief were reasonable: all of which is, indeed, fully shown by the testimony on file. That, in fact, the prices charged were less than such articles were worth soon afterwards; and that, therefore, the deduction made by the former committee must have been on conjectural grounds merely.

From an examination of the evidence certified from the files of the office of the fourth auditor, as having been "connected with the account of Daniel Renner and Nathaniel H. Heath, which was reported for settlement to the second comptroller on the 25th of February, 1819," (only nine days after the passage of the act referred to, and which it is fair to presume, therefore, comprised all the material evidence in the case,) there is nothing found controverting these positions. And from evidence since taken, it seems clear that the transportation of the movable property destroyed, to and from a place of safety, would not, at the time, have cost exceeding two dollars per ton.

The present committee, however, do not feel disposed, at this distance of time, to disturb the former action of Congress on this point.

The committee referred to also rejected the claim for the value of the buildings destroyed, (\$5,650,) on the ground that "the same would have been burnt by the enemy if the materials of cordage and hemp had been removed therefrom." This opinion is unsustained by evidence. The usages of civilized warfare, it would seem, justified the destruction of the cordage ready manufactured to be used in the navy for hostile purposes, and in burning *that*, the buildings were necessarily consumed as an adjunct. ~~If~~ it be justifiable to burn an *empty rope-walk*, which is designed and used for the manufacture of articles needful for the community as well as for Government, it would be equally so to destroy the shop of the blacksmith or of the clothier, and, indeed, of any other artisan or manufacturer whose work is directly or indirectly more or less useful in the prosecution of war.

But, if a responsible notice of the affair, contained in a leading newspaper, the National Intelligencer, then and yet published in this place, and which notice appeared August 30, 1814, within less than one week after the enemy evacuated the city, is deemed admissible evidence, it would seem clear that, had the owners not been prevented by the government

from removing the naval stores from their rope-walk, the latter would not have been destroyed.

In that notice, an editorial (as certified within a few days past by the highly respectable gentlemen who have been its editors from a time long anterior to the period in question) it is stated that "private property was, in general, scrupulously respected by the enemy during his stay in the city, with the exception of two or three houses burnt because *guns were fired from them on the enemy*;" and that "the National Intelligencer office, besides them, was the *sole exception*."

The office of that paper was made the exception, doubtless, because it was the leading organ of the Government, and had been and was an able and influential advocate of the war, and of its vigorous prosecution. It would follow from the premises, therefore, as already stated, that if the cordage had been removed in time, the buildings, in common with every other building in or near the city, (employed in the manufacture of articles useful indifferently for purposes of war or peace) would have been spared. The committee the more readily recommend payment for the building, from the fact that the value thereof is far less than the deduction conjecturally made by the first committee on the whole claim, as then presented. That the compensation then made was greatly below the actual loss, is strongly corroborated by the fact that the owners from being in affluent circumstances, shortly afterwards became bankrupt, and that the family of the surviving partner, Mr. Renner, now deceased, have long since been plunged in poverty and destitution.

The next item is a claim for seventeen hundred and fifty pounds of seine twine, burnt at the time referred to, which was inadvertently omitted in the first petition for relief, but which is clearly embraced in the testimony on file, taken within only three or four years after the burning, and for payment of which application was early made to Congress. The allowance of this item is also recommended, and that these items be again referred to the proper accounting officers of the Treasury department to settle and allow on principles of equity and justice, with a restriction as to amount. A bill is accordingly reported for the relief of John F. Callan, as administrator of Daneil Renner, late surviving partner of the said firm of Renner and Heath.

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1852.

Ordered to be printed.

Mr. BADGER submitted the following

REPORT :

[To accompany bill S. No. 38.]

The Committee on Naval Affairs, to whom was referred "a bill for the relief of M. K. Warrington and C. St. J. Chubb, Executors of Captain Lewis Warrington and others," have had the same under consideration, and report :

That the same subject was referred to the Committee on Naval Affairs, at the first session of the last Congress, when a report was made briefly setting out the facts out of which the claim originated, and accompanied by a bill for the relief of the claimants, which report the committee adopt as part of this their report, and recommend the passage of the bill without amendment.

IN SENATE—February 19, 1850.

The Committee on Naval Affairs, to whom was referred the " memorial of Lewis Warrington, for himself and the officers and crew of the Peacock, praying the payment of the balance of the prize money due them for the capture of the British ship Epervier in the year 1814," report :

That in the month of April, 1814, the British ship Epervier was captured by the United States sloop of war Peacock, under the command of the memorialist, and was afterwards, in the district court of Georgia, condemned, with her tackle, apparel, guns, and other implements of war, " as a prize of war to the captors," and a sale ordered to be made by the marshal of the district ; that on board of the Epervier was also captured a large sum in specie, which was also, by the same court, " condemned as prize of war to the captors ;" and that a sale was afterwards made by the marshal according to the order of the court.

The committee further report that the Epervier was a vessel of equal force with the Peacock, as appears by the report of the capture made to the Navy Department by Captain Warrington ; by the report of the arrival of the prize in the port of Savannah, made by the officer put in charge of her by Captain Warrington ; by the negotiations between the Department

and Captain Warrington for the purchase of the prize ; and finally by the decree of condemnation to the captors *only*.

By the fifth section of the act of Congress approved 23d April, 1800, and entitled " An act for the better government of the navy of the United States," (2 Stat. at Large, page 44,) it is enacted " that the eedprocs of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors ; and when of inferior force, shall be divided equally between the United States and the officers and men making the capture." And, therefore, it is certain, in the opinion of the committee, as well from the true facts of the case as from the terms of the decrees of condemnation, that the officers and men of the Peacock, the captors, were entitled to the whole proceeds of the sale and to the whole amount of specie ; and the same should, by the marshal, have been accounted for and paid over to them. But the committee find that in fact this was not done ; but, on the contrary, the marshal, from some mistake or misapprehension, treated this as a case for division between the United States and the captors, and paid to the agent of the captors only one moiety, paying the other moiety into the treasury of the United States. The committee are, therefore, of opinion that the moiety received by the United States, being undoubtedly the property of the captors at the time it was so received, ought in justice to be accounted for to the true owners.

The lapse of time since the erroneous payment was made might furnish some objection to affording relief, if the grounds of the claim rested upon uncertain proof—upon proof liable to be misunderstood or clouded by time ; but in this case all the facts stated by the committee—the whole ground of the claim—stand proved by official records and papers, which cannot be mistaken or mislead, and which show the truth now with the same unerring certainty as at the very time of the transaction. These proofs accompany the memorial and are submitted with this report. The memorialist asks only the principal sum ; and the right being clear, the justice of the demand, instead of being weakened, is strengthened by the great length of time during which the United States has had what rightfully belonged to others.

If the right of the claim must secure its allowance from the justice of Congress, its prompt and cheerful allowance is due also to the consideration that it grew out of one of that series of brilliant victories upon the ocean and the lakes which shed such signal glory upon our country, and must ever be remembered with patriotic pride by every one who bears the name of American.

The committee have accordingly accompanied this report with a bill, which they recommend to the favorable consideration of the Senate.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1852.

Ordered to be printed.

Mr. MALLORY submitted the following

R E P O R T :

[To accompany bill S. No. 156.]

The Committee on Naval Affairs, to whom was referred the memorial of John W. Simonton, John Whitehead and others, praying compensation for the occupation of the island of Key West, by the naval forces of the United States, and for losses thereby incurred, makes the following report :

The memorialists, in December, 1821, acquired the island of Key West by purchase from the original Spanish grantee. The Spanish government, on the 26th of August, A. D. 1815, granted the island to Juan P. Salas, in consideration for certain public services, and he, by deed of conveyance, bearing date the 20th of December, 1821, transferred it to John W. Simonton, one of the memorialists. The treaty of the 22d of February, 1819, between the United States and Spain, guaranteed the title under which the memorialists claim the island, as fully appears by the action of the board of commissioners appointed to ascertain claims and titles to lands in East Florida, under the Florida treaty, recommending the confirmation of said grant from Spain to Salas, and the conveyance to Simonton, on the 14th of December, 1825; and the act of Congress, approved 23d of May, 1828, confirmed the said title of Simonton to the island.

This island is immediately opposite the Havana, the sailing time between the two ports being but eight hours. It is in latitude 24° 33' north, situated immediately on the edge of the gulf, with a capacious and safe harbor, to which ships of the largest class ever built can find easy ingress at all times. Its excellent harbor and favorable position with reference to the trade of Cuba, Porto Rico, the Gulf, and Mexican ports, constituting it an admirable depot of merchandise for the supply of these and other markets, was one of the main inducements of Simonton's purchase; and this, together with its extensive and valuable natural salt pond, in which large quantities of salt were frequently deposited by solar evaporation, and without the application of labor or expense, induced Simonton, soon after his purchase of Salas, to take possession of the island, and enter energetically upon the development of its resources. He carried there a large quantity of lumber, and building materials generally; sheep, poultry, hogs, &c., and a large number of workmen; and he proceeded to lay out the plan of the present city of Key West, erected commercial warehouses, residences, and to make other improvements, and to cut and cord several hundred cords of wood

to supply transient and passing vessels. He held out inducements, by bestowing town lots, &c., to all who chose to settle there, and made such arrangements generally as were calculated to secure a rapidly increasing population.

At this time, piracy existed in the gulf of Mexico, and about the shores of Cuba and Porto Rico, to an alarming extent; and the government of the United States, in adopting energetic measures for its suppression, organized a squadron specially for it, and placed it under the command of Commodore David Porter. The admirable geographical position of Key West, and its eligibility as a naval station, was represented to the government of the United States early in 1832, by the memorialists; and in March of that year, Lieutenant M. C. Perry, in command of the schooner Shark, under orders from the Navy Department, visited Key West, planted there the standard of the United States, as an indication of taking formal possession, and he at once reported to the Government the superior advantages of Key West as a naval rendezvous. Subsequently, in November, 1822, a survey of the harbor, its channels, and adjacent lands, was made by Captain D. T. Patterson, and reported to the Navy Department.

On the 1st of February, 1823, the Secretary of the Navy ordered Commodore Porter, commanding the squadron for the suppression of piracy in the Gulf, "to establish at Thompson's island, usually called Key West, a depot, and to land the ordnance and marines to protect the stores and provisions." In his report of the 23d of April following, Commodore Porter informed the Navy Department that he "had built storehouses on Thompson's island, landed stores, collected together all the schooners of the squadron, and stationed them at different points on the coast of Cuba.

When Commodore Porter landed at Key West, he took possession of the island as the representative of the United States, and claimed that it belonged to the United States, and disregarded entirely the proprietary interest and possession of Simonton or others, and treated him, and all occupying by, through, or under him, upon the island, as intruders. He erected government storehouses, barracks, guard-houses, boat-sheds, &c., without regard to the wishes of the proprietors, and in opposition to their plans and surveys of the town. He dispossessed the proprietors of some of their lands, gave licenses to others to occupy them contrary to their wishes, and permitted the proprietors themselves to hold their property only by his toleration, and prevented them from disposing of or occupying their own lands without his previous sanction. He prevented them from enlarging their warehouses, and from erecting buildings, and, in all respects, exercised controlling authority over them and their property. The cord wood, cut and prepared for sale, was seized and appropriated to the public service, and in consequence of his orders, their stock of sheep and hogs was destroyed, and they were prevented from executing their purpose of manufacturing salt on the island.

The absolute occupation of the whole island in this manner by the United States, continued three years and upwards; and they thus occupied a part of it for a still longer period. The effort of the Government to suppress piracy in the Gulf was successful, and this success was owing in a great measure to its occupation of Key West, overlooking as it does the north side of Cuba, the Bahamas, the Florida Keys and reefs, and the whole trade of the Gulf, and affording as it did a capacious and excellent harbor of easy access to the squadron, immediately on the great highway of com-

merce. This important object of the Government was effected by the occupation, use, appropriation, and destruction of the property of the memorialists, and the consequential injuries to them, growing out of its occupation, must have been considerable, though your committee has no means of estimating them.

The United States, in justification of the orders to Commodore Porter and of his acts of supreme control which have been recited, alleged that Simonton, though a *bona-fide* purchaser from the original grantee, Salas, had no right to the possession of the island until the formal recognition of his title by the American Government. The Government found Simonton in possession; but it maintained that such possession, not having existed when the Floridas were formally transferred to the United States, was wrongful; that the title gave no legal right to the possession, until recognized by the appropriate tribunals contemplated by the Treaty of Cession. Your committee cannot admit the legality, the equity or the force of this position. The rights of Salas, and of all claiming under him were determined and secured by the Treaty of Cession. Under his grant of August, 1815, he *had* the right of possession in the island; and he had this right at the date of the Treaty of February, 1819, and at the delivery of the Territory. These rights which he had under the Spanish government were divested by the transfer, but were secured and provided for. Simonton acquired by a *bona fide* purchase of the island from Salas, in December, 1821, the title to and right of possession of the island. And under these rights he took possession quietly—was found in possession by the United States, and was by them divested of his possession. The validity of the conveyance from Salas to Simonton, having been recognized by the tribunals of the country, the right of possession must relate back to its date.

The papers in the case are voluminous, and after a careful examination of them, your committee entertains no doubt that the allegations of the memorialists are true, and that compensation is justly due to them.

This is the third time that the memorialists have come before Congress for relief. The Committee on Naval Affairs of the House of Representatives, in 1847, by its chairman, the Hon. Thomas Butler King, made an able report in their favor; but it was not reached in the usual course of business, and no action was taken upon it by the House. That report says: "Upon a full and careful examination of the evidence submitted by the memorialist, the committee are of opinion that their statements and complaints are well founded. The testimony of the officers of the navy, and of the inhabitants of the island, who were cognizant of the facts, fully sustain the allegations of the petitioners." The report goes on to show that "the Government had no right to take the property of the petitioners for public use without making for them a suitable compensation." And it continues: "The committee are therefore of opinion that the only question for decision is in relation to the amount to be paid to the petitioners for their property thus taken for the public use." The value and importance of the island are stated at length, and the report concludes thus: "That the occupation of this island by the Government in the manner described and proved, resulted in serious losses, both immediate and perspective, to the owners, cannot, for a moment, be doubted by any one after a careful and candid examination of all the testimony. The injuries sustained by them have already been referred to in this report, and are of such a character as to call for immediate redress. The amount claimed for the occupation,

damages &c., is stated at \$114,000. The committee do not feel justified in reporting a bill for so large an amount without more specific statements and proof of particular damage by the action of the Government officers, although they do not doubt that the consequential damages were as great, or even greater, than that sum. They are of opinion that the safest mode of redressing the wrongs and injuries which the memorialists have suffered, one which could not be improperly referred to as a precedent upon future occasion—would be to refer the whole matter to the proper accounting officers of the treasury, under the direction of the attorney-general, to audit and settle the claim upon principles of justice and equity.”

The memorialists again brought their claim before Congress in 1848, and the Committee on Naval Affairs in the House of Representatives, made a second favorable report, and concurred in the conclusions of the report of the previous year, and reported a bill accordingly, providing for the adjustment and payment of the claim under the supervision of the Secretary of the Navy. (See House bill 199, report 189, first session, thirtieth Congress, February 9, 1848.) After a careful examination of the whole subject your committee deems the memorialists entitled to relief and report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1852.

Ordered to be printed.

Mr. FISH submitted the following

REPORT:

[To accompany bill S. No. 157.]

The Committee on Naval Affairs, to whom was referred the petition of John S. Devlin, Administrator of Elijah J. Weed, late Quartermaster of Marines, deceased, report:

That Major Weed, who was a quartermaster of marines, died in March, 1838, indebted to the Government; and the petitioner, as his administrator, seeks, as an offset to the balance claimed, and with the view to relieve his sureties, an allowance of one per cent. upon certain disbursements made by him, between the year 1835 and the date of his death, and asks a reëxamination of the accounts of the deceased officer, for the purpose of having certain items, rejected on the former settling, now passed to his credit.

In support of the claim for per centage upon disbursements, the memorial alleges that, for some years after the office of quartermaster of marines was established, navy agents and others disbursed the principal appropriations for the marine corps, and received a per centage therefor. That system, being found inconvenient, was abandoned; the disbursements were thrown upon the quartermaster, and, for these new duties, the quartermaster was allowed one per cent. upon the moneys disbursed.

The memorial alleges that this per centage was allowed to Major Weed, from 1822 until 1835, from which time it was refused: and that "it was refused under the proviso of the act of 1835, in relation to the Delaware Break-water," which proviso had been pronounced, by the Attorney General, to be of a permanent character; under which opinion the Secretary of War had issued an order abolishing all extra compensation, not authorized by law, to officers of the army. This proviso, the memorial further alleges, was afterwards determined, by the Supreme Court, to be applicable only to the appropriations made during the session of Congress at which the act was passed; but it was also decided, by the same court, that, as extra pay had been allowed for extra services, under the *usages* of the War Department, the usage was under the legal control of the Department, and liable to be abolished by the Secretary. His order, therefore, although issued under an erroneous conception of the laws, was valid, and must be observed.

Although the petitioner thus shows that the order, or regulation of the War Department, disallowing extra pay, was sustained and held to be valid by the Supreme Court of the United States, he complains that the allowance for per centage on disbursements, "which he had received for more

than thirteen years, was cut off under the decision of the Treasury." And, hereupon, the petitioner argues that the usages of the War Department do not regulate those of the Navy Department, which alone has the control of the marine corps; and that the extra duties, therefore, imposed by the heads of the War and Navy Departments, were so dissimilar in their nature and responsibilities, that no common rule of compensation could, at all times, be justly established.

But the petitioner is mistaken in his allegation that the accounting officers of the Treasury withheld the per centage claimed by the representatives of Quartermaster Weed, upon the ground of the order of the War Department above referred to. The reasoning of the petitioner, based upon this allegation, is, therefore, misdirected. The facts in connection with the disallowance of this commission, as represented to the committee by the Fourth Auditor of the Treasury, are as follows:

"It is true that, upon a voucher presented by the petitioner, as administrator of Major Weed, in the year 1838, for this commission of one per cent. upon the purchase of clothing, from March 3d, 1835, to March 5th, 1838, an endorsement was made by the clerk in this office, who was charged with the examination of the account, stating that the Secretary had refused, upon the ground of the act of March 3, 1835, relative to the Delaware Breakwater, to allow such commission, which endorsement was copied in the "Reconciling Statement:" but this was an error, as the correspondence between the Department and this office shows. The real facts of the case are these:—The marine corps, being but a small body, was not allowed, by law, a commissary of subsistence, or a commissary of purchases, and the Secretary of the Navy saw fit to direct the quartermaster to perform certain duties, which would have properly belonged to those officers, had such existed. He was also charged with the superintendence of the marine armory. For this last mentioned duty he was allowed, by the Department, a compensation of \$150 per annum; for his services in relation to the subsistence of the corps, he was allowed thirty dollars a month; and on his purchases of marine clothing, a commission of one per cent. This commission was not granted, however, until the year 1826 or 1827, when it was made to extend back as far as 1823 or 1824. On the 30th of June, 1834, an act was passed reorganizing the marine corps, and assimilating the allowances of the officers of that corps to those of officers of corresponding grades in the infantry of the army. With the account of Quartermaster Weed, for the fourth quarter of 1834, he presented a voucher for his extra compensation, as Commissary of Subsistence; another for pay as Superintendent of the Armory; and a third for the commission of one per cent. on his purchases of clothing. These were referred to the Secretary of the Navy, who, in a letter to this office, of the 21st of October, 1835, refused to allow them; not upon the ground of the act of March 3, 1835, but because, as he expressly states, he considered them inadmissible under the act of June 30, 1834, of which I have spoken."

"These allowances of extra compensation to the Quartermaster of Marines were granted by the head of the Navy Department, and they were abolished by his authority from the 30th June, 1834. It was not therefore under an order of the War Department, as the petitioner alleges, that these allowances were refused by the accounting officers of the treasury to Quartermaster Weed, which order he contends would not affect them; but it was

under an order of the Secretary of the Navy, upon whom they depended for their existence, to which order the accounting officers of the treasury were bound to conform."

The petitioner has clearly shown in regard to the abolition of extra allowances by the Secretary of War in relation to the army, that it is not material whether the action taken by the head of the department was based upon a correct or incorrect construction of a particular statute—it being within the legitimate exercise of the discretion committed to him by law. Concurring entirely in this view of the conclusiveness of the decision of the Secretary of the Navy with regard to the allowance of the percentage upon purchases, upon the accounting the officers of the treasury, the committee is clearly of opinion that they were bound to conform to his order, that they properly rejected the claims for per centage.

The committee further express the opinion that it would not be expedient at this time, after the lapse of eighteen years, to recommend to Congress a review or revival of a decision made by the head of the Navy Department, in the undoubted exercise of the discretion properly belonging to his office, and with a full and intimate knowledge of circumstances then existing and causes then operating, which, after such length of time, cannot be supposed to be within the reach of information by Congress. Should this claim of per centage be now allowed, there is no reason why it shall be denied to others; and even-handed justice will require that accounts which have been settled for years, be re-opened in favor of those who have liquidated their balances, as well as in favor of one who for a great length of time has been in arrears to the Government. What amount of money such decision will draw from the treasury, it is not in the power of the committee at present to estimate. They are of opinion that the claim to effect the balance due from Major Weed's estate by a charge of commissions on his disbursements from 1834 to his death, should not be allowed.

Before dismissing this branch of the subject, the committee call attention to the fact that Major Weed, in his life time, presented with his account for the fourth quarter of 1834, a voucher for similar commissions to those now claimed, which were disallowed by express decision of the Secretary of the Navy. The claim does not appear to have been received by him during his life, but is now advanced by his representatives to relieve his sureties from the payment of a balance for which he was in default.

With regard to the other items rejected by the accounting officers, a list of which accompanies the petition—"the allowance of which," the memorial states, "would amount to very near the balance charged against Major Weed." The committee are not aware but that there may be some allowances that have been rejected, to which the law or the regulations of the department gave Major Weed or his representatives a right. The petition asks that the account may be settled and adjusted upon "equitable principles." The committee knows of no principles but those prescribed by law and the regulations of the department upon which they can recommend a settlement of the accounts of petitioner. In this case they believe that law is equity, and they are unwilling to commit the account to the arbitrary and uncontrolled notions of "equity" or of justice which the accounting officers of the treasury may chance to entertain. But believing that the estate of the deceased may be entitled to the allowance of some of the items which have been rejected, they report a bill for the relief of the petitioner, the passage of which they recommend.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1852.

Ordered to be printed.

Mr. FOOT submitted the following

R E P O R T :

[To accompany bill S. No. 158.]

The Committee on Pensions, to whom was referred the petition of Nancy Wright, report :

That they have had under consideration said petition, and concur in the report made to the Senate on the 30th January, 1851, which they make a part of this report ; and recommend the passage of the bill for the relief of Nancy Wright, which accompanied said report.

IN SENATE, January 30, 1851.

The Committee on Pensions, to whom was referred the petition of Nancy Wright, widow of James Wright, and the petition of the citizens of Boston, praying that a pension be allowed the said Nancy Wright, beg leave to report :

That James Wright was appointed an "engineer of the revenue service of the United States," by President Polk, on the 1st March, 1845, and immediately entered upon his duties on board of the United States steamer McLean. That in May, 1846, said steamer was attached to the "navy service," and was under the orders of Commodore Conner, and other officers of the navy, during the Mexican war, and engaged in towing ships into action in the attack upon the castle of San Juan d'Ulloa, and in other important naval service. It is shown to the satisfaction of the committee that in consequence of severe duty and exposure in said service, said Wright contracted illness which occasioned his death, and the committee are of the opinion that relief should be extended to the petitioner ; they therefore report a bill for that purpose.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1852.

Ordered to be printed.

Mr. Rusk made the following

R E P O R T :

[To accompany bill S. No. 159.]

The Committee on the Post Office and Post Roads, to whom was referred the petition of Robert Jemison and Benjamin Williamson, praying compensation for extra services in carrying the mail, have had the same under consideration, and respectfully report:

That the claimants were mail contractors, in 1836, to carry the United States mail on route 2656, from Montgomery, Alabama, via Selma, to Tuscaloosa, and in consequence of disturbances with the Creek Indians, were required to carry mails not belonging to their contract. Owing to the failure of the contractors on route 2696, from Selma to Elyton, they were also obliged to carry the mail over said route, for which they never had contracted. At the second session of the 25th Congress, a law was passed authorizing the Postmaster General to cause to be paid to them, as they supposed at the time, the value of all of the extra service thus performed; but that officer, in acting under said law, felt himself constrained, by the terms thereof, to restrict the allowance to the extra services imposed by the Creek disturbances only. (See report and bill on file.) The claimants now ask Congress to pass a law allowing them, in addition to the compensation already granted, the remuneration to which the original contractors from Selma to Elyton would have been entitled, during the same time, had they continued to comply with their contract. The fact of the petitioners having carried the mail from Selma to Elyton, after the original contractors failed to do so, is established by certificates of the postmasters on the route for a great portion of the time, and there can be no reasonable doubt that such was the case. It is further in evidence that, in order to perform the service thus unexpectedly thrown upon them, the claimants were obliged to add to their stock, at a considerable expense.

Under these circumstances, your committee recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1852.

Submitted, and ordered to be printed.

Mr. RUSK made the following

R E P O R T :

[To accompany bill S. No. 160.]

The Committee on the Post-office and Post-roads, to whom was referred the petition of Nathaniel Kuykendall, made the following report :

The petitioner was a contractor, in 1839, for carrying the mail on route No. 1932, in Virginia, from Romney to Clarksburg, and carried the mail for four years and a half at a rate of compensation of two thousand dollars per annum, being the price stipulated to be paid for conveying the mail in two-horse stages, two trips a week and back. But he actually carried the mail in four-horse post-coaches, three trips a week and back, and in one day and a half, instead of two and a half days, which was the schedule under his contract. For the employment of four-horse coaches, instead of two-horse stages, and for one additional trip weekly, and the increased speed, he claims an additional compensation, which he estimates at about eight thousand dollars for the whole term of his contract. The facts that the petitioner carried the mail in four-horse post-coaches, and that he made three trips a week, and with increased speed, are satisfactorily proved. It also appears that the additional horses and the additional trip increased the tolls on the route about fifty per cent., being nearly five hundred dollars per annum.

This additional service was not expressly authorized by the department, but the circumstances which induced him to perform it are such as he claims authorized a belief that he should be paid for it; or afford a reasonable ground of equity, entitling him to compensation. These circumstances are as follows: At the lettings in 1839, the mail from Winchester to Parkersburg, on the Ohio river, consisting of three routes, was advertised for bids in two-horse stages and in four-horse coaches; and when the bids were considered, the department accepted the proposals for four-horse service on the eastern and western divisions of the route; but on the middle division, for which the petitioner was the bidder, it accepted the proposals for two-horse service; but at the same time expressly reserved the right to change it to four-horse service, and represented to the contractor that it would be so changed as soon as the revenues of the department would admit of it. It was a part of the contract that the contractor was to convey with the mail the passengers who came in the stage conveying the mail, at the points of connexion

—that is, Romney and Clarksburg. The contract having been accepted for the lower grade of service in the middle division of the route only, the petitioner found that it would be difficult, if not impossible, for him to perform the same service, both in the conveyance of the mail and passengers with two horses, which the contractors on the east and west ends of the route would perform with four horses. Some of the postmasters and citizens on the route, perceiving his difficulty, interested themselves in the matter, and endeavored to relieve him from the embarrassments of his contract. At the request of the citizens of Marietta, the postmaster of that place went with the petitioner to Washington to see the Postmaster General on the subject, before the time for commencing the service, to induce him to order four-horse service, in conformity with the other divisions of the route. The Postmaster General declined then to order the higher grade of service, but gave encouragement that it might be ordered soon.

Under these circumstances, and with the advice of the citizens on the route, the petitioner was induced to stock the route for four-horse coach service and to commence carrying the mail in that way, expecting soon to receive authority for this change in his service. He continued to transport the mail in four-horse coaches, and to make three instead of two trips a week, during the whole term of his contract, which was known to the department; but it did not order the higher grade of service, nor notify the contractor that he must not expect to be paid for the additional service he was rendering. Since the expiration of the petitioner's contract, the whole of this route has been let for four-horse coach service, whilst the mails are not increased beyond what they were during the preceding contract.

The question in the case seems to be, whether the circumstances under which this additional service was performed were such as to afford a reasonable ground of equity for compensating the petitioner for the same. And the committee are of opinion that they do afford such equitable ground, and they therefore report a bill for his relief. But they do not adopt, as the rate of compensation, the actual charges claimed by the petitioner, but the difference between the sum he received and the sum since paid for the higher grade of service, with an additional trip weekly, on the same route. This is \$1,267 per annum, making for the four years and a half the sum of \$5,701 50, which they think ought to be paid to the petitioner, and they report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1852.

Ordered to be printed.

Mr. DAWSON made the following

REPORT:

[To accompany bill S. No. 161.]

The Committee on Military Affairs have had under consideration the memorial of Lieutenant-Colonel David D. Mitchell, and find the facts to be as follows :

That he was a lieutenant-colonel of a regiment of Missouri volunteers, commanded by Colonel A. M. Doniphan, in the late war with Mexico; that said regiment was ordered to march on New Mexico; that on the march to Chihuahua, Lieutenant-Colonel D. D. Mitchell received from his superior officer, Colonel Doniphan, an order—which he executed by issuing the following order :

CAMP BELOW EL PASO,
February 10, 1847.

GENTLEMEN: The Colonel commanding orders me to repair with a detachment of troops to the camp now occupied by the traders, and compel (if necessary) Messrs. Harmony & Poras, together with their wagons, teams, men, &c., to fall immediately in the rear of the army and move in that position. All American citizens in your employment as drivers, will be enrolled amongst the companies about to be organized, and used in time of action. You are therefore ordered to move down immediately, and occupy such ground in the vicinity of the camp, as may be selected by the Colonel commanding.

D. D. MITCHELL,
Lieutenant Colonel, &c.

Messrs. HARMONY & PORAS, *Traders.*

In obedience to the order of Colonel Doniphan, the wagons, teams, &c., of said Harmony & Poras were under the command of Colonel Mitchell; this order was carried into execution on the 10th day of February, 1847, and held subject to the orders of the Colonel commanding, until the army arrived at Chihuahua.

For having thus executed the order of his commanding officer, Lieutenant-Colonel D. D. Mitchell, after the termination of the war with Mexico, being in the city of New York, in the year 1849, an action at law was commenced against him for said seizure, in the District Court of the United

States for the Southern District of New York, which action or suit was honestly defended by counsel employed by Colonel Mitchell, aided by the District Attorney of the United States for that district, by the instructions of the Government of the United States, and judgment rendered against said Mitchell, for about ninety-five thousand dollars. The Attorney General of the United States investigated the case with the intention of taking it up to the Supreme Court, but finding no ground to justify the proceeding, it was abandoned. It is proper to observe, that Colonel Mitchell notified the Government immediately after suit was commenced, and requested their aid in his defence.

Colonel Mitchell being a citizen of the State of Missouri, and having no property in the State of New York, out of which to make the money to satisfy said judgments, a copy of the record was forwarded to Missouri, and suit again instituted on said judgment obtained in New York, which was again defended by the District Attorney of the United States, under the instructions of the Attorney General, and also by able counsel employed by Colonel Mitchell. The result has been a judgment against Colonel Mitchell for upwards of one hundred and two thousand dollars, under which his property is liable to sale, and he to pecuniary ruin, for having honestly and faithfully obeyed his superior officer, in time of war, in the country of a hostile nation.

Under these circumstances, your committee are unanimously of the opinion that the Government of the United States is bound to relieve Lieutenant Colonel D. D. Mitchell from said judgment. They therefore report a bill for his relief, in accordance with the request of the Secretary of the Treasury, made a part of this report, and the justice of the claims in his behalf.

TREASURY DEPARTMENT,
February 27, 1851.

SIR: It has been made known to this Department, that a judgment has been rendered against Lieutenant-Colonel Mitchell in the Circuit Court of the United States for the Southern District of New York, in a suit brought against him individually for acts done by him as a lieutenant-colonel in the military service of the United States during the late war with Mexico, and performed by him in good faith and in obedience to the orders of his superior officer. I understand that it will require ninety-seven thousand dollars to cover the amount of this judgment and the costs and expenses consequent thereon, and I have the honor to request and recommend that an appropriation of that amount may be made for that purpose.

Very respectfully, your obedient servant,

THOMAS CORWIN,
Secretary of the Treasury.

HON. JEFFERSON DAVIS,

Chairman Committee Military Affairs, Senate.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1852.

Ordered to be printed.

MR. STOCKTON made the following

R E P O R T :

[To accompany bill S. No. 162.]

The Committee on Naval Affairs, to whom was referred the memorial of William A. Christian, report :

It is alleged in the petition filed in this case by Purser Christian, that on assuming his duties on board the United States steamer Princeton, a regular transfer was to him made, by Purser Upshur, of the accounts of the officers and crew of that vessel. Among these were the accounts of officers having acting appointments, namely: C. C. Bartling, acting sail-maker, William Taylor, acting boatswain, and James H. Conley, acting carpenter, to whom the memorialist continued to pay their salaries, as it had been done by his predecessors, Pursers McBlair and Upshur, on whose books they had previously been borne. The memorialist states that he knew the appointments of these officers had been made with the approbation of the Hon. Secretary of the Navy, and no orders had been received from the Navy Department or from Captain Stockton for their discharge from the service after the passage of the act of June 17, 1844, they being still continued in the performance of their respective duties.

William Taylor, one of the above-named officers, was discharged on the 18th of July, 1844, and J. R. Fox appointed by Captain Stockton to succeed him as the acting boatswain of the ship. The memorialist states that having doubts whether *this* appointment would be approved by the department, he addressed the Fourth Auditor upon the subject, asking for information whether he could rightfully pay the salary of boatswain to Mr. Fox, under the existing law; that the Fourth Auditor referred this communication to the Hon. Secretary of the Navy, who returned it to the Auditor with the following endorsement: "September 15, 1843, Captain Stockton was authorized to select and rate a carpenter, boatswain, &c., the department having none at its disposal—let him be paid as rated.—J. Y. M.;" which was promptly communicated to him (the memorialist) in reply by the Auditor.

This appointment and the approval were both subsequent to the passage of the act of June 17, 1844, and the memorialist alleges that he, therefore, felt no longer doubt respecting the propriety of paying these officers. Nor did he think he could afterwards hesitate to pay E. A. Yorke, as boatswain, when he was appointed by Captain Stockton to succeed Mr. Fox,

who was discharged on the 15th December, 1844, as he had every reason to suppose that the department had recognised, by its former endorsement of approval, the power of Captain Stockton to make the appointment.—The memorialist says that he continued under these impressions until he received a communication from the Hon. Mr. Bancroft, in which he is informed that “Mr. Yorke cannot be paid as boatswain,” for reasons therein assigned. At the time this letter was received, however, Mr. Yorke had been discharged from the service, and paid off in full. During his stay on board, no apprehension was felt by the memorialist, as he states, respecting the propriety of paying him.

“A proviso in the navy appropriation act of August 4, 1842, prohibited any increase of the officers of the navy beyond the number in the respective grades that were in service on the 1st day of January, 1842.” As the warrant officers paid by Purser Christian had been employed in violation of this restriction, the Fourth Auditor very properly refused to allow a credit for the items of disbursement covering their pay.

But the committee regard this to be a very proper case for relief by the legislative interposition. The acting Secretary of the Navy, Mr. A. Thos. Smith, in a letter dated September 15, 1843, expressly authorized Captain Stockton to select and rate men for the places of carpenter, boatswain, &c. At the time Mr. Christian joined the ship he found these men enrolled and rated for pay by his predecessors, without intimation of objection from the department. When boatswain Taylor was discharged and a new appointment made by Captain Stockton, apprehending some possible difficulty at the accounting offices, he wrote to know whether he should place the new appointee upon the roll, and received a reply which reiterated and confirmed the authority of Captain Stockton, and was well calculated to satisfy all doubts as to the propriety of the payments made to the several other warrant officers of the ship. This last letter is so explained by the Fourth Auditor, as to relieve that excellent officer from any imputation of carelessness—but the fact still stands that the letter which Purser Christian received was a reasonable ground for believing the payments he was making were approved at the department. The letters which were referred to are annexed. It is doubtful whether the proviso in the act of 1842 was intended to apply to warrant officers. Be that, however, as it may, so inconvenient was the operation of it found to be, that Congress, by the act of March 3, 1847, repealed the restriction so far as applied to the appointment of boatswains, gunners, carpenters, and sailmakers.

The committee believe that Purser Christian made the payments under an honest belief, founded upon reasonable grounds, that he was bound to do so, and that the payments were legal. No other person than the Secretary of the Navy was authorized to determine when the complement of officers in any particular grade was full; and the fact of his authority to Captain Stockton to make these appointments, indicated to all the subordinates of the department that the list of the grade mentioned was not full, and that the appointments were legal. Whatever fault there was in the transaction was on the part of the acting Secretary of the Navy, who disregarded the existing law; and his fault ought not to be visited in judgment upon Mr. Christian.

The committee report a bill for the relief of Purser Christian.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1852.

Submitted, and ordered to be printed.

Mr. BAYARD made the following

R E P O R T :

The Committee of Claims, to whom was referred the petition of Joseph Hill and Sons, report :

That the petition claims compensation for a herd of fifty-six horses and mules, alleged to have been stolen from the petitioners, who reside in Mariposa county, California, by certain Indians "who have been treated with by the agents of the United States," and subsequently recovered by the California volunteers, whilst in the service of the United States. It also states, that the horses and mules recovered were never restored to the petitioners. The prayer of the petition is, that the value of the property, alleged to have been stolen, may be paid out of any moneys appropriated for the use of the Indians who stole it, or by whatever appropriation Congress may deem just and proper.

The committee have considered the claim and the evidence adduced to support it, and are of opinion that it is altogether too loosely and defectively stated to authorize relief, and that the evidence is entirely insufficient to sustain even the indefinite claim made. The committee therefore recommend the adoption of the following resolution :

Resolved, That the prayer of the petition be denied.

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1852.

Ordered to be printed.

Mr. JAMES made the following

REPORT:

[To accompany bill S. No. 171.]

The Committee on Revolutionary Claims, to whom was referred the memorial of Jane Irwin, asking compensation for services rendered and losses sustained by the memorialist's father, Colonel Jared Irwin, beg leave to report:

A brief statement of facts contained in the affidavits of the several witnesses, and documentary evidence accompanying the memorial of Jane Irwin, only surviving child of General Jared Irwin, of Georgia, asking compensation for services rendered and losses sustained in the service of his country.

The papers furnished show that General Irwin was an officer in the war of the Revolution; that he entered the service as a captain, at or near the commencement thereof; that he was promoted to the rank of major, and subsequently to that of colonel; that he was in many sieges and battles—particular mention is made of the sieges of Savannah and Augusta, and of the battles of Camden, (South Carolina,) Briar Creek and Black Swamp, in each of which he distinguished himself for his bravery and gallant conduct; that he continued in service during the whole war, and contributed much valuable aid in the struggle for independence; that such was his zeal and activity in the cause of his country, that he rendered himself peculiarly obnoxious to the enemy, who omitted no opportunity of laying waste his fields, burning and destroying and carrying off his property; that at one time he lost one hundred head of cattle, a number of valuable horses, also two negroes, a man and woman, just grown and very valuable; that he built a fort called Fort Burke, in which the inhabitants all took shelter at his own expense; that from all that is known, it does not appear that he received any remuneration for his services, or for the heavy losses he sustained, either from the General Government or from the State of Georgia, except a bounty of two hundred and fifty acres of land from the latter.

That after the close of the Revolutionary war he was much engaged in suppressing Indian hostilities on the borders of the State, by whom bloody inroads upon the inhabitants were made; that in order to protect the citizens he built and garrisoned, with four hundred men, with his own means, for two months, a fort at White Bluff; that during these border difficulties, himself and family suffered many losses and hardships; that he had

much of his property destroyed and carried off, and his wife and family were often compelled to leave their home and seek safety in the swamp, in which they remained all night in great peril and exposure; that it does not appear that Colonel Irwin ever received any pay for his services or remuneration for the money expended or losses sustained in quelling these disturbances or protecting the citizens.

In addition to the evidence which is filed with the memorial of petitioner, reference is made to McCales' history of Georgia, for proof of her father's services in the Revolutionary as well as the Indian wars.

General Irwin it appears was held in high esteem in his State. He was several times a member of the legislature; was twice elected governor, and was, at the period of his death, which occurred in February, 1818, president of the Senate of Georgia.

It is further shown that Jane Irwin, the petitioner, has been reduced from affluence to dependence; and is now almost entirely destitute.

The committee believe that justice and sound policy require at the hands of the Government some acknowledgement of services so valuable.

The committee, therefore, report a bill allowing the memorialist the half pay of captain, from the end of the war to the death of Colonel Irwin, her father—say thirty-five years.

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1852.

Mr. DODGE, of Wisconsin, made the following

REPORT:

[To accompany bill S. No. 173.]

The Committee on Commerce, to whom was referred the memorial of John McReynolds, praying payment of expenses incurred in consequence of a change in the location of a light-house, which he had contracted to build on Beaver island, in Lake Michigan, report:

That they have examined the grounds upon which the memorialist claims damages of the United States, amounting to the sum of \$1,036 86. It appears that the collector of customs and superintendent of lights for the district of Michilimackinac contracted with the memorialist to erect a light-house on Beaver island, in Lake Michigan; that a tract of public land has been reserved for that purpose, upon section twenty-four, township thirty-seven north, of range eleven west; that the memorialist commenced the work by the erection of suitable buildings for his mechanics and laborers, and to excavate the cellar for the keeper's building, when he received advice, by letter, that the collector of customs deemed it his duty to change the site for the location to a bluff about one and a half mile east of the point designated. By a letter from Captain Gilbert Knapp, of the marine service, it appears that both points had been selected by Captain Knapp, who had been appointed to survey and to report to the Treasury Department, and who recommended the location of the light-house on the southwest point of the island, which, being public land, he proposed should be reserved from sale. It was reserved, and the land office plat transmitted to the superintendent of lights at Mackinaw. It appears from the letter of the Fifth Auditor that instead of doing so, he applied again to Captain Knapp, and was informed that he had fixed on the south end of the island, upon a high bluff; which, on a survey, proved to be the property of an individual upon this bluff. The light-house was built by the superintendent without further inquiry. The whole difficulty appears to have arisen from Captain Knapp having reported to the department, as the proper site, the southwest point instead of the south end of the island.

It appears from the letter of the superintendent himself to the Auditor, bearing date 9th of October, 1851, that much additional expense was incurred by the contractor, Mr. McReynolds, under the circumstances following, viz: "after the contractor had gone to the island, with the plat forwarded to him (the superintendent) in your (the Fifth Auditor's) letter of

the 21st of July last, and the site pointed out, had erected buildings for the protection of the materials, and commenced the excavation of the earth from the cellar to the house ; when, greatly to his injury and delay, he was obliged to remove to the ground selected by Captain Knapp. The cost of the whole work, I have good reason to believe, will be nearly doubled in consequence of the contractor being compelled to *hoist* (which he has done by horse-power) all his materials up this bluff, which is of sand and very high. Mr. McReynolds (the contractor) has complained bitterly at this change in the *sites*, and I trust he will not be allowed to suffer any loss by this circumstance."

The committee have, therefore, reported a bill (S. 173) for the relief of the memorialist.

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1852.

Ordered to be printed.

Mr. DOWNS made the following

R E P O R T :

[To accompany bill S. No. 172.]

The Committee on Private Land Claims, to whom was referred the petition of George Jennings and others, report :

The petitioner represents that T. D. Jennings would be entitled to a pre-emption on the land on which his father resided at the time of his death, but for the fact, that after his death the family were compelled, by their extreme poverty, to remove from the land. The committee think that this circumstance ought not, under the circumstances, to deprive the son of his right, and therefore report a bill in his favor, and recommend its passage. The bill allows the entry of any quantity less than one hundred and sixty acres, because it is represented that he might not have the means of entering the whole.

Hamilton, *Print.*

IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1852.

Ordered to be printed.

Mr. SOULE submitted the following

REPORT:

[To accompany bill S. No. 177.]

The Committee on Commerce, to whom was referred the memorial of citizens of Apalachicola, praying that Samuel Bray, keeper of the Dog island light-house, on the coast of Florida, may receive some remuneration for the losses suffered by himself and family, during the gale of the 23d and 24th of August, 1851, have had the same under consideration, and now ask leave to report:

That the case submitted to the committee is one of peculiar hardship for the individual in whose behalf the memorialists have addressed Congress. Almost a whole family swept away by the hurricane, its property destroyed, and the survivors left in a state of absolute destitution and ruin; and this while in the service of the United States, and when they should have considered themselves protected against danger, by the fitness and solidity of the building which they were prepared to guard and attend. Such are the main facts laid before the committee. The power of Congress to interpose in cases like this, viewing it as one of those acts of God against which the government cannot be considered as insuring its officers and employees, is perhaps doubtful. The committee, however, have felt inclined to report favorably to the sufferer, predicating the right of Congress, in this instance, on the presumption that the light-house was not a fit and solid building—such a one as ought to have been provided—and that, therefore, the loss incurred in consequence of its destruction can properly be imputed to the responsibility of the government, and laid to its charge. The committee, therefore, recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1852.

Ordered to be printed.

Mr. BRODHEAD made the following

REPORT:

The Committee of Claims, to whom was referred the petition of the Orange and Alexandria Railroad Company, in the State of Virginia, with the documents which accompany it, have had the same under consideration, and report:

This petition is based upon the following resolution, adopted 15th March, 1850:

"Be it resolved by the General Assembly of Virginia, That the claim of this Commonwealth against the Government of the United States for the sum of one hundred and twenty thousand dollars, advanced to the United States, by an act of the General Assembly, passed the 27th day of December, 1790, be and the same is hereby transferred to the Orange and Alexandria Railroad Company, and that said company be empowered to demand and receive the same, and the interest thereon; and when recovered of the United States, the said Orange and Alexandria Railroad Company shall issue, for the net amount of such recovery, certificates of stock in the company aforesaid, as so much additional stock therein, to the president and directors of the Literary Fund, which shall be held by them, to the use and benefit of the primary schools, for the purposes of primary education in the Commonwealth."

The company having thus become the assignee of the State, asks the return to it of the amount furnished by Virginia towards the erection of the public buildings, on the establishment of the permanent seat of the Government of the United States in this District.

The claim was presented to both houses of the last Congress. The Committee of Claims of the House of Representatives made a favorable report, accompanied by a bill providing for the payment of the claim asserted, but it failed to receive the action of the House.

The Senate Committee of Claims, to whom the subject was referred, made a report of facts which they deemed it most proper to submit, and ask the instructions of the Senate upon them. A bill was subsequently passed by the Senate, for the relief of the company.

The claim having been again presented to the Senate, and being for a large amount, and asserted by one of the States, they have deemed it to be their duty to give the subject a full and deliberate consideration, and to bring to the notice of the Senate, facts, history and views not heretofore presented.

It sufficiently appears, from the records of the proceedings of the "commissioners of the federal buildings," that the sum of \$120,000 was received by them from the treasurer of Virginia, upon orders drawn by the President of the United States, and that it was expended by them in carrying on the objects of their appointment.

This money appears to have been paid to the treasurer of the board, and

to have been merged in the general fund, applicable to the purposes of erecting the public buildings, and making the other necessary preparations for the reception of the government.

The first and principal question presented for consideration is, whether this sum was understood and intended by the parties to be in the nature of an advancement or loan to the General Government, to be repaid, either with or without interest? or whether it was a gift or grant of money, in consideration of the seat of the Federal Government being located on the banks of the Potomac?

In order to arrive at a proper understanding and determination of this question, it was deemed necessary to fully examine the records and history of the proceedings connected with the location of the seat of the Federal Government.

The States of New York and Pennsylvania, by acts of their respective legislatures, furnished to Congress the use of all necessary public buildings during the time it held its sessions in their respective States. New Jersey also offered the use of public buildings.

On the 23d December, 1784, Congress passed a resolution for the erection of the necessary buildings for the permanent use of the Congress and the public functionaries, near the falls of the Delaware, for which purpose one hundred thousand dollars was appropriated. Commissioners were appointed to carry this resolution into effect; but no further progress was made until May 10th, 1787, when Mr. Lee of Virginia moved the following resolution:

“Resolved, That the board of treasury take measures for erecting the necessary public buildings, for the accommodation of Congress, at Georgetown, on the Potomac river, so soon as the soil and jurisdiction of the said town are obtained, and that on the completion of the said buildings, Congress adjourn their sessions to the said federal town.

“Resolved, That the States of Maryland and Virginia be allowed a credit in the requisition of 1787, or in the arrearages due on past requisitions, for such sums of money as they may respectively furnish towards the erection of said buildings.”

This motion was lost. Affirmative, Massachusetts, New York, Virginia, and Georgia. Negative, New Jersey, Pennsylvania Delaware, Maryland, and North Carolina.

In 1787 the new constitution was adopted, leaving the resolution for establishing a seat of the Federal Government on the banks of the Delaware unexecuted. New York having appropriated its public buildings to the use of the new Government, Congress met in that city, and on the 6th April, 1789, a quorum of both houses appeared and proceeded to business. On the 15th May following, Mr. White from Virginia presented to the House of Representatives a resolve of the legislature of that State, offering to the Federal Government ten miles square of its territory, in any part of that State which Congress may choose, as the seat of the Federal Government. On the next day, Mr. Seney, of Maryland, submitted an act of that State, offering to the acceptance of Congress ten miles square of its territory, for the seat of the Federal Government.

These were the first movements, under the new constitution, towards the establishment of the seat of Government. Numerous memorials and petitions followed, from citizens of Pennsylvania, New Jersey, and Maryland, for the selection of a site in their respective States.

On the 5th September, 1789, a resolution passed the House of Representatives, “that the permanent seat of the Government of the United States ought to be at some convenient place on the banks of the Susquehanna, in the State of Pennsylvania.”

On the introduction of the bill to carry this resolution into effect, much

feeling was manifested by the southern members, and particularly by the members from Virginia, who earnestly contended that the banks of the Potomac was the most suitable location. Mr. Madison thought, if the proceeding of that day had been foreseen by Virginia, that State might not have become a party to the constitution. (Annals of Congress, vol. 1, page 890.) The bill was passed by the House, by a vote of ayes thirty-one, noes seventeen. It was amended in the Senate by striking out all that part respecting the Susquehanna, and inserting a clause fixing the permanent seat of Government at Germantown, Pennsylvania, and also providing, "that the law should not be carried into effect until the *State of Pennsylvania, or individual citizens of the same, should give security to pay one hundred thousand dollars, to be employed in erecting the public buildings.*"

These amendments were agreed to by the House, with an amendment providing that the laws of Pennsylvania should continue in force in said district, until Congress should otherwise direct. The bill was then returned to the Senate, and the consideration of the amendment of the House was postponed to the next session. Germantown, therefore, was actually agreed upon by both Houses, but the bill failed on account of a slight amendment.

When the subject came up at the next session, Mr. Smith, of Maryland, proposed Baltimore as the location, and said that the inhabitants of that place had *raised a subscription of between twenty and thirty thousand pounds, to erect suitable buildings.*

In the mean time, the legislature of Virginia (on the 3d December, 1789) passed an act, ceding to Congress a district for the location of the seat of Government in that State; also a resolution directing that law to be transmitted to the general assembly of Maryland *without delay*, asking the coöperation of that State in the effort to get the seat of Government fixed on the banks of the Potomac.

The following is the Virginia resolution :

"Resolved by the General Assembly of Virginia, That a copy of the foregoing act of the 3d December, 1789, be transmitted to the general assembly of Maryland without delay; and that it be proposed to said assembly to unite with this legislature in an application to Congress, that in case Congress shall deem it expedient to establish the permanent seat of the Government of the United States on the banks of the Potomac, so as to include the cession of either State, or a part of the cession of both States, this assembly will pass an act for advancing a sum of money, not exceeding one hundred and twenty thousand dollars, to the use of the General Government, to be applied, in such manner as Congress shall direct, towards erecting public buildings, the said assembly of Maryland, on their part, advancing a sum not less than two-fifths of the sum advanced by this State for the like purpose."

On the receipt of the Virginia resolution, the assembly of Maryland passed a similar resolution, agreeing to cede the necessary territory, and to furnish seventy-two thousand dollars towards the erection of the public buildings.

New York and Pennsylvania had gratuitously furnished "elegant and convenient accommodations" for the use of the Government, during the eleven years that it was located within their respective limits, as appears from the resolutions passed by Congress on its removal. They had offered to continue to do so. New Jersey offered accommodations at Trenton. The citizens of Baltimore, through their representative, proposed to furnish money for the erection of the necessary buildings, in that "town," for the Federal Government. One hundred thousand dollars had been *required to*

be paid by Pennsylvania, or its citizens, as a condition of the location of the Government in that State.

This was the state of things when the propositions of Virginia and Maryland were brought forward, to advance one hundred and ninety-two thousand dollars, "to be applied towards erecting public buildings at the permanent seat of the Government of the United States, on the banks of the Potomac."

On the 31st May, 1790, a bill was introduced into the Senate, to determine "the permanent seat of Congress, and the Government of the United States." On the 28th June, this bill being under consideration, memorials were read from citizens of Baltimore, and from inhabitants of Georgetown, for the selection of those places; and a motion being made to insert—"on the river Potomac, at some place between the mouths of the Eastern branch and the Connogochegue, be, and the same is hereby accepted, for the permanent seat of the Government of the United States,"—it passed in the affirmative.

The bill was further amended, as follows:

"And be it further enacted, That for defraying the expense of such purchases and buildings, the President of the United States be authorized and requested to accept grants of money, and cause to be borrowed a sum not exceeding one hundred thousand dollars, at an interest not exceeding six per cent., &c."

In this form the bill was sent to a select committee, consisting of Messrs. Butler of South Carolina, Johnson of Connecticut, Henry of Maryland, Lee of Virginia, and Dalton of Massachusetts. In their report on this part of the bill is the following proposition:

"Your committee further recommend, that such sums of money as may be offered by the States for the carrying this bill into effect may be accepted of; then the bill will read thus—'and to accept grants of money or land.'"

The bill was accordingly amended by striking out that part which authorized the borrowing of money for the erection of the public buildings. Yeas nineteen, nays seven. A motion was subsequently made to restore the clause, "and cause to be borrowed a sum not exceeding one hundred thousand dollars, at an interest not exceeding six per cent.," and it was negatived without a division.

The "act for establishing the temporary and permanent seat of the Government of the United States," passed, and was approved by the President on the 16th of July, 1790, fixing the "permanent seat" on the banks of the Potomac, in accordance with the propositions of the legislatures of the States of Maryland and Virginia—and the "temporary seat" at Philadelphia.

In the act, as passed, no authority was granted to borrow money or contract for or accept a loan on any terms, either with or without interest. On the contrary, such authority was expressly denied. It is a general rule that all are bound to take notice of the provisions of a public law. By the fourth section of the act, the President was "authorized and requested to accept grants of money." And to this acceptance of grants his authority was clearly limited. It is not to be presumed that the authorities of Virginia did not know or understand the provisions of this law.

Did President Washington transcend these limits, as prescribed by Congress, when he received from the States of Virginia and Maryland the several sums of money appropriated by their respective legislatures "to

be applied towards erecting public buildings at the permanent seat of the Government of the United States on the bank of the Potomac?"

On the 22d of January, 1791, as appears by the manuscript records in the office of the Commissioner of Public Buildings, President Washington appointed Thomas Johnson and Daniel Carroll, of Maryland, and David Stuart, of Virginia, commissioners under the act of 16th July, 1790, and on the 24th day of the same month he issued his proclamation fixing the "location of one part of the said district of *ten miles square*" on the Virginia side of the Potomac, and the "other part" on the Maryland side. The commissioners met on the 12th April, 1791, and proceeded to execute the duties of their trust. Their first object was to locate the city, acquire the title to the soil, and fix the sites for the principal public edifices. And having accomplished these preliminaries, they applied to the President for the necessary funds to carry on their operations. As many of the public lots as could be properly disposed of were directed to be sold, and the proceeds to be placed in the treasury, and application was made to the President for orders on the States of Maryland and Virginia for the payment of the instalments pledged by those States. In a letter of President Washington, addressed to the commissioners, from Richmond, dated 13th April, 1791, he says:

"Agreeable to the assurance given to Mr. Carroll, I applied, immediately upon my arrival in this city, to Gov. Randolph, for two thousand dollars for federal purposes, under your direction; although, by the law of this State the payments of the \$120,000 are to be made by instalments, the Governor is well disposed to advance the money at earlier periods.

"P. S.—Since writing the foregoing I have again conversed with Gov. Randolph, and have drawn upon him, payable to your order, for forty thousand dollars, being the first instalment."

Governor Randolph also wrote to the commissioners, acknowledging the receipt of the order, and saying that he would meet it as fast as the state of the treasury would allow, and that \$1,000 would be paid immediately.

The commissioners also addressed a communication to the Governor of Maryland, asking for the payment of "*money granted*" by that State.

On the 6th of June, 1792, the commissioners wrote to the Governor of Virginia as follows: "There remains behind a part of the *Virginia donation*, which was receivable for the past year, and urging the necessity of immediate payment."

The following, in reference to the second instalment of Virginia, appears upon the records of proceedings of the board of commissioners of the federal city, viz:

"Received sundry letters, and among them one from the Secretary of State, enclosing the following order:

"PHILADELPHIA, November 18, 1792.

"**SER:** Be pleased to pay to Messrs. Johnson, Stuart and Carroll, commissioners of the federal buildings on the Potomac, or to their order, or to the order of any two of them, the second instalment of the moneys granted by the State of Virginia, towards the said buildings.

GEORGE WASHINGTON.

"**THE TREASURER OF VIRGINIA.**"

"On the President's order the commissioners made the following endorsement, and delivered it to their treasurer, to wit:

"Pay the contents to Colonel William Deakins, or order.

"DAVID STUART,
"DANIEL CARROLL,

Digitized by "Commissioners."

This order was forwarded to the commissioners, enclosed in a letter from Thomas Jefferson, then Secretary of State, in which he says, "I have the honor to enclose you the President's order on the treasurer of Virginia for the *second instalment of the money given by that State.*" [See manuscript letter of Mr. Jefferson, dated 13th of November, 1792, on file in the office of Commissioner of Public Buildings.] A similar record appears in reference to the payments of Maryland, viz :

[Record of proceedings of the Board of Commissioners.—Pages 70 and 170.]

"PHILADELPHIA, Dec. 27, 1791.

"SIR: Be pleased to pay to Thomas Johnson, David Stuart and Daniel Carroll, esqs., Commissioners of the Federal District, or to their order, or to the order of any two of them, twenty-four thousand dollars, *given by the Assembly of Maryland towards defraying the expenses of the public buildings within said district.*

"GEO. WASHINGTON.

"THOMAS HOWARD, Esq.,

"*Treasurer of the Western Shore of Maryland.*"

This order was endorsed by the commissioners to William Deakins, jr., their treasurer, and upon it the money appears to have been paid. This would seem to settle very clearly the understanding of General Washington, Mr. Jefferson, and of the executive officers of Maryland and Virginia, of the nature of the "advance" made by those States. A similar order for "the third instalment of the sum given by the Assembly of Maryland," &c., was given by General Washington, dated March 2, 1793.

On the 7th February, 1793, the commissioners, in a communication to Mr. Jefferson, say: "We have as yet received only \$10,000 on the President's second draft on Virginia. We have to-day written to the executive of Virginia, requesting a payment of the balance."

They also address urgent memorials to the governor and to the assembly of Virginia, earnestly and repeatedly soliciting the payment of instalments of the "donation of Virginia" and the "Virginia donation towards erecting the public buildings." In the records and books and in the correspondence of the commissioners, whether with the President, the governor of Virginia, the general assembly of that State, or with other persons, whenever this fund is alluded to, it is designated as the "donation," "grant" or "gift" of Virginia.

Mr. Edmund Randolph, Secretary of State, in a letter to the commissioners dated August 21, 1794, says: "I have this day written to the governor and treasurer of Virginia, stimulating them to the payment of the *arrears of the donation.* Perhaps you had better add a representation of the necessity of the federal city for such a supply."

The foregoing history of the early legislation upon the subject clearly proves, in the judgment of the committee, that Virginia intended the said sum of \$120,000 as a gift or donation, and not a loan, because—

1. No time or manner of repayment is provided for.
2. The President of the United States had no authority to borrow money or contract for a loan. He was only authorized to accept grants of money.
3. The offer of Virginia of the said sum is conditional, provided the seat of government was located near or within her territorial limits; and it was made after Pennsylvania and Baltimore had offered donations or gifts, and when there was a strong probability that Germantown would be agreed upon as the site. There is no reason to infer that Virginia would have ad-

vanced that or any other sum, if the seat of government had remained at Philadelphia, or had been located at Germantown.

4. General Washington calls it a "grant" when drawing his order on Virginia, and a "gift" when drawing on Maryland. The law of Maryland was the same as Virginia. Jefferson calls it at the time a "gift" in one letter, and a "donation" in another. The commissioners and others, when communicating with the authorities of Virginia, called it a "donation." It is designated as a "donation" on their books. Mr. Randolph, then Secretary of State, called it a "donation."

5. There is a presumption against the *legal right* to demand the said sum, arising from lapse of time.

It has been urged that the particular phraseology used in the original proposition of Virginia, contained in the act of 10th December, 1789, implies an obligation upon the part of the United States to refund the money received. The words are, "Virginia will pass an act for *advancing* a sum of money not exceeding one hundred and twenty thousand dollars *to the use* of the general Government," &c. The word "*advance*" to the use of another, does not always create an obligation to repay such advance; but, in this instance, the word must be considered in connexion with the other words used in the same connexion, "to be applied, in such manner as Congress may direct, *towards erecting public buildings*" in a particular place. The money advanced was so applied and the trust executed.

President Washington, it is true, asks, in a letter dated the 29th August, 1793, in "what manner it would be proper to state the accounts with the States of Virginia and Maryland, they having advanced moneys which have not been all expended on the objects for which they were appropriated." The commissioners, in their answer, say: "We have always been of opinion that the donation or loans from Virginia and Maryland, and other means, make but one aggregate, all equally liable to be disposed of for the necessary purposes of *surveying and other expenses of the city*, as well as erecting the public buildings, and have acted on that idea, and the accounts are so kept." On the 5th of September, 1793, he appointed two gentlemen to examine the accounts. From the reply of the commissioners, as well as from the report of the persons appointed to examine their accounts, it clearly appears that the object of President Washington's *quere* was to ascertain whether the funds received from Virginia and Maryland were applicable to the "*public buildings*," *strictly*, or to the general purposes of the commissioners in preparing for the reception of Congress at the new seat of Government.

Congress having, on the said 16th of July, 1790, passed an act in compliance with the invitation of Virginia and Maryland, locating the seat of Government on the banks of the Potomac, it became necessary for Virginia to pass another act, providing for the payment of the money. Accordingly, on the 24th of December, 1790, a bill was introduced into the House of Delegates "for *granting* to the President of the United States the sum of one hundred and twenty thousand dollars for erecting the buildings on the Potomac river, agreeably to the resolution of the last Assembly." When the bill was passed, the title was amended by striking out the word "grant" and inserting "*advance*," and hence it is argued that Virginia did not intend to grant the money, but to loan it. No such inference is authorized by this circumstance. The word *advance* had been used in the original act, and it is presumed that the title of the bill was amended to make it conform thereto.

Provision was only made for paying the money agreed to be advanced, and which the President was authorized to accept, and for a particular purpose.

It has also been urged that the assumption of the State debts by the Federal Government was brought about by connecting it with the question of the federal district, and that Virginia was greatly displeased with such assumption, and would not therefore have been very likely to have given money to erect buildings, &c. The fact is admitted; "secession" and "dissolution" were spoken of at that early day; a "compromise" was resorted to; those who desired the location of the seat of Government on the banks of the Potomac were gratified; and those at the north, under the lead of Alexander Hamilton, obtained the funding system, and Pennsylvania lost the permanent seat of the Federal Government. It is true, Virginia was greatly displeased with the act funding the State debts, but Mr. Jefferson says that the "pill" was "sweetened" by a "concomitant measure," to wit: the location of the Federal Government on the banks of the Potomac. The following extract from Mr. Jefferson's "Memoirs and Correspondence," pages 448 and 449, volume 4; clearly proves how the business was managed. Mr. Jefferson says:

"The great and trying question (the assumption of the State debts) however, was lost in the House of Representatives. So high were the feuds excited by this subject, that, on its rejection, business was suspended. Congress met and adjourned from day to day without doing anything, the parties being too much out of temper to do business together. The eastern members particularly, who, with Smith from South Carolina, were the principal gamblers in these scenes, threatened *secession and dissolution*. Hamilton was in despair. As I was going to the President's one day, I met him in the street. He walked me backwards and forwards before the President's door for half an hour. He painted pathetically the temper into which the legislature had been wrought; the disgust of those who were called the creditor States; the danger of the secession of their members, and the separation of the States. He observed that the members of the administration ought to act in concert; that though this question was not of my department, yet a common duty should make it a common concern; that the President was the centre on which all administrative questions ultimately rested, and that all of us should rally around him and support, with joint efforts, measures approved by him; and that the question having been lost by a small majority only, it was probable that an appeal from me to the judgment and discretion of some of my friends might effect a change in the vote, and the machine of government now suspended might be again set in motion. I told him that I was really a stranger to the whole subject; that not having yet informed myself of the system of finance adopted, I knew not how far this was a necessary sequence; that undoubtedly, if its rejection endangered a dissolution of our Union at this incipient stage, I should deem that the most unfortunate of all consequences, to avert which, all partial and temporary evils should be yielded. I proposed to him, however, to dine with me the next day, and I would invite another friend or two, bring them into conference together, and I thought it impossible that reasonable men, consulting together coolly, could fail, by some *mutual sacrifices of opinion, to form a compromise* which was to save the Union. The discussion took place. I could take no part in it but an exhortatory one, because I was a stranger to the circumstances which should govern it. But

it was finally agreed to, that whatever importance had been attached to the rejection of this proposition, the preservation of the Union and of concord among the States was more important, and that therefore it would be better that the vote of rejection should be rescinded, to effect which, some members should change their votes. But it was observed that this pill would be peculiarly bitter to the southern States, and that *some concomitant measure should be adopted to sweeten it a little to them*. There had before been a proposition to fix the seat of Government either at Philadelphia or at Georgetown, on the Potomac; and it was thought that by giving it to Philadelphia for ten years, and to Georgetown permanently afterwards, this might, as an anodyne, calm in some degree the ferment which might be excited by the other measure alone. So two of the Potomac members (White and Lee, but White with a revulsion of stomach almost convulsive) agreed to change their votes, and Hamilton undertook to carry the other point. In doing this, the influence he had established over the eastern members, with the agency of Robert Morris, with those of the middle States, effected his side of the agreement, and so the assumption was passed."

The following extracts from the speeches of members of Congress in the debate upon the final passage of the bill locating the seat of the Federal Government where it now is, clearly show the views and understanding of those who passed the law. To ascertain what answer the law-makers would give to a question of construction, is always a good way to get at the intention of a law :

[Annals of Congress, volume 2, pages 1718 to 1781.]

Mr. LEE, of Virginia, remarked : That while the present position continued to be the seat of Government, the agriculture of the States to the eastward is invigorated and encouraged ; while that to the southward is languishing and expiring. He then showed the fatal tendency of this preponderating encouragement to those parts of the country already considered as the strongest parts of the Union ; and from the natural operation of these principles he inferred that the interest of the southern States must be eventually swallowed up. The decision of the Senate, (said he,) affords a most favorable opportunity to manifest the magnanimity of soul which shall embrace, upon an extensive liberal system, the best interests of the great whole. This cannot be done while the present unequal situation of the seat of Government of the United States continues. Nations have their passions as well as individuals. He drew an alarming picture of the consequences to be apprehended from *disunion*, ambition and rivalry. He then gave a pleasing sketch of the happy effects to be derived from a national, generous and equal attention to the southern and northern interests. Will gentlemen, said he, blast this prospect by rejecting this bill ? I trust they will not.

"It is true," said Mr. Lee, "that the citizens of this place (New York) have put themselves to great expense to accommodate the Government, and are entitled to much praise for their exertions ; but he wished to take up the subject upon national grounds," &c.

"He then moved that the papers received from the Executive of Virginia be read, which was done." [It is presumed the papers alluded to were the resolutions of Virginia, offering money and land.]

Mr. BURKE, of South Carolina, said : It was unjust to the people of New Rep.—2

York to remove from that city till the expense they had incurred was repaid to them. It was a breach of honesty and justice. It was injustice to the State—to the whole nation. He entered into a consideration of their sacrifices and services. He spoke in handsome terms of Pennsylvania; but he was afraid of their influence, and thought if they obtained the temporary seat of Government, it could never be removed from Philadelphia.

Mr. MADISON remarked: Sir, we should calculate on accepting the bill as it now stands; we ought not to risk it by making any amendments. We have it now in our power to procure a southern position; the opportunity may not again speedily present itself. We know the various and jealous interests that exist on this subject. We should hazard nothing. If the Potomac is struck out, are you sure of getting Baltimore? May no other places be proposed? Instead of Baltimore, is it not probable we may have Susquehanna inserted—perhaps the Delaware? Make any amendment, sir, and the bill will go back to the Senate. Are we sure it will come into our possession again? By amending we give up a certainty for an uncertainty. In my opinion we shall act wisely if we accept the bill as it now stands; and I beg leave to press it on gentlemen not to accept of any alteration, lest it be wholly defeated and the prospect of obtaining a southern position vanish forever."

Mr. WHITE, of Virginia: "After the present ferment is subsided, this position [on the Potomac] will be *considered as a permanent bond of Union*; and the eastern States will find their most essential interests promoted by the measure." He adverted to the trade of Massachusetts, which, he said, was greater to Virginia than to the whole Union besides: "the southern States will be cordial in promoting their shipping and advancing their interests, when they observe that the principles of justice influence them on this great national question."

In view of the foregoing history, facts and considerations, the committee conclude and decide, that if the United States could be sued, the claimants could not recover, either in a court of law or equity.

The question then arises, whether, considering the sum advanced to be a "gift" or "donation," it should be repaid. As such its repayment is not asked, and therefore the committee do not undertake to decide the question, but refer it to the judgment of the Senate.

The committee, however, are unanimously of opinion, that if, looking to all the circumstances of the advance made by Virginia, and viewing it as a "donation" or "grant," the Senate should determine that it is just and proper to repay the same, then the sum of \$72,000 advanced by Maryland should also be repaid, and a reasonable compensation made to the States of New York and Pennsylvania for the use of their public buildings by Congress and the public officers, prior to the removal of the seat of Government to Washington.

The records show that Congress and the public officers occupied the public buildings fitted up by, and belonging to, the State or city of New York, for a period of about one year and six months, and the public buildings in Philadelphia, then belonging to the State of Pennsylvania, from the 6th of December, 1790, to about the close of the year 1800, a period of about ten years. It is believed that twenty thousand dollars would be a reasonable compensation to be offered to New York, and one hundred thousand dollars to the State of Pennsylvania. It does not appear that either State ever received any thing more than thanks. At that time the

government was poor and burdened with the immense debt of the Revolution.

The committee therefore submit the following resolution :

Resolved, That the committee be discharged from the further consideration of the subject.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1852.

Ordered to be printed.

Mr. JONES, of Iowa, made the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Adam Hays, report :

That the petitioner served during the war of 1812, as an army surgeon, and from exposure contracted a violent cough, which resulted in hernia. In January, 1838, he furnished the necessary evidence to entitle him to a pension, and has from that date to the present received twenty-two dollars and fifty cents per month. He now asks for arrears of pension from the 15th of June, 1815, when he was discharged, to the 30th of January, 1838, when his present pension commenced.

The committee deem it inexpedient, in the case of the petitioner, to depart from the rule established by the act of February 4, 1822, and recommend that his petition be rejected.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1852.

Ordered to be printed.

Mr. BORLAND made the following

R E P O R T :

[To accompany bill S. No. 181.]

The Committee on Military Affairs, to whom was referred the petition of William C. Easton, report :

That this case has been before Congress, at different times, for many years. As far back as December 30, 1834, a favorable report upon it was made to the Senate from the Committee of Claims; and subsequently, January 2, 1845, a bill for the petitioner's relief was reported from the Committee on Military Affairs.

The claim of the petitioner is for services as a clerk in the office of the Commissary General of Subsistence, from June 1, 1823, to March 2, 1827, when such services were necessary to the business of that office, but for which provision had not been made by law. During the time mentioned, he was paid, out of the contingent fund of the office, at the rate of four hundred and twenty dollars per annum—the lowest salary of clerks in the executive offices being, at that time, eight hundred dollars.

The facts in detail, of which the foregoing statement is a summary, are set forth in the petition, and confirmed by two letters of General Gibson, of December 19, 1834, and January 13, 1835, which are appended to and made part of this report.

From a careful examination of the case, the committee are of opinion that the claim of the petitioner is an equitable one, and that he is clearly and fully entitled to the compensation he has so long asked at the hands of Congress. The committee, therefore, report the accompanying bill for his relief.

To the honorable the Senate and House of Representatives of the United States :

Your petitioner, William C. Easton, of the city of Washington, represents to your honorable bodies that he was employed in the War Department, office of the Commissary General of Subsistence, as a clerk, from the first day of June, 1823, to the first of March, 1827; that during all that time his duties were of an important character to the office and to the

department, he having performed functions for which, in almost every other office of the several departments, the highest clerks' salaries were and are paid; that there was, during that time, owing to circumstances beyond the control of the Commissary General of Subsistence, no regular appropriation for the payment of a clerk to perform the duties confided to your petitioner; but that, feeling the impracticability of dispensing with his services, or of doing without some person in his stead, the efforts of the Commissary General were repeatedly directed towards getting him permanently placed, at an adequate compensation, which was not in any degree effected until 1827; that during the period above mentioned, your petitioner was paid at the rate of four hundred and twenty dollars per annum. Your petitioner therefore asks that he be allowed, for the time he was employed, the difference between the amount received by him and the lowest clerk's salary, to wit, eight hundred dollars per annum. Your petitioner refers your honorable bodies to the records of the office to which he was attached, and to the head of that office, for a verification of his statement. Your petitioner represents, in addition, that the hopes of remuneration without an appeal to your honorable bodies, have never, till now, deserted him; and he therefore throws himself upon your justice, confident that he will receive it at your hands.

As in duty bound, your petitioner, &c.,

WILLIAM C. EASTON.

WASHINGTON CITY, *December 8, 1834.*

OFFICE OF THE COMMISSARY GENERAL OF SUBSISTENCE,
Washington, December 19, 1834.

SIR: I have the honor to acknowledge the receipt of yours of the 18th instant, accompanied by the petition of William C. Easton, for extra compensation as a clerk in this office.

The petition has been carefully perused, and the facts therein set forth are strictly true. Many unsuccessful attempts were made to increase Mr. Easton's salary, during the period embraced between the 1st June, 1823, and the 2d March, 1827, when an act of Congress passed for an additional clerk, at eight hundred dollars per annum, which situation Mr. Easton received. His services were of an important character, growing out of vast increase of business in the office, and rendering an additional clerk absolutely necessary. His duties were unremitting, and faithfully performed.

I consider him fairly and justly entitled to the extra compensation for which he now petitions your honorable body; in fact, so much so, that had the pecuniary means of the office been adequate to the expenditure, Mr. Easton would have been paid at the rate of the difference in salary for which he now prays.

Mr. Easton's petition is herewith returned.

With great respect, your obedient servant,

GEORGE GIBSON,
Commissary General of Subsistence.

The Hon. JOHN TIPTON,
Senate United States.

OFFICE COMMISSARY GENERAL OF SUBSISTENCE,
January 13, 1835.

SIR: Mr. Wm. C. Easton, a clerk in my office, has a claim before the Committee of Claims of the House of Representatives, for the difference between what he received for upwards of three years and the lowest clerk's salary; and he claims it on the score of having performed during all this time, "duties of an important character to the office," and "a greater part of the time functions for which, in almost every other office of the several departments, the highest clerks are paid." The statement of Mr. Easton is true; but inasmuch as he informs me that further proof is desirable, I will add, by way of supporting his claim, that as soon after he came into my office as was practicable, I made every effort to obtain an appropriation for a regular clerkship, and he had my promise, and knew of my efforts to that effect; and I should have succeeded in speedily accomplishing my purpose, if it had not been for the difficulty which then, as well as now, attends the obtaining from Congress of any accession of force in a public office. It was not till the year 1825 that a bill was introduced into the House of Representatives calculated to accomplish the end in view; and this failed in the Senate, owing to some unavoidable circumstances, but not on account of any objections to the measure. There was then another year of procrastination, which finally brought Mr. Easton's services, at the low compensation stated by him, down to March, 1827.

I am perfectly satisfied that Mr. Easton continued in the office, from the first, for no other reason than the hope and belief of being soon placed at an adequate salary. I found his services of value to the office. He has always been an active, industrious, and enterprising clerk. I therefore sought to secure him to the office. He worked most diligently, and has an equitable claim to much more than he asks for.

It is proper I should state that, at the establishment of the commissariat, it was not known how many clerks would be necessary to the performance of its duties; but it was soon discovered, as the present system was in operation, that the force allowed me by law was totally insufficient. There being, however, no means of paying a clerk, beyond the small amount that could be obtained from a contingent fund, no one would remain in the office, in addition to the salaried clerks, till Mr. Easton's services were obtained. That he would have consented, had a written contract been made, to serve between three and four years for an amount, as I am well assured, totally inadequate to support him in this city, no one can suppose; and his remaining in service, under such circumstances, can only be accounted for upon the true ground—that of continual assurances of receiving ample remuneration.

In conclusion, I stood in need of a clerk. Mr. Easton was appointed to perform the requisite duties, for which I paid him the sum he mentions. The amount did not satisfy him nor myself. *I would have paid him the full amount he claims, could I have done so.* Mr. Easton performed duties, from the first day of his entering my office, richly entitling him to the full salary. The United States received the advantage of his services to that extent, at least; and I consider them bound to pay him, for he has

never relinquished his claim for the balance due him, but has always considered it a charge against the department, which, unfortunately, it has not the means of liquidating.

I have the honor to be, with great respect, your obedient servant,

GEO. GIBSON,

Commissary General of Subsistence.

Hon. CHAIRMAN COMMITTEE OF CLAIMS,

House of Representatives.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1852.

Submitted, and ordered to be printed.

Mr. JONES made the following

REPORT:

[To accompany bill S. No. 39.]

The Committee on Pensions, to whom was referred "a bill (S. 39) to authorize the payment of invalid pensions in certain cases," beg leave to report:

That by the first section of the act of May 15, 1828, each surviving officer of the continental line of the army of the Revolution was to receive a pension, "to begin on the third day of March, one thousand eight hundred and twenty-six, and to continue during his natural life." The second section provided, "that whenever any of said officers has received money of the United States, as a pensioner, since the third day of March, one thousand eight hundred and twenty-six, aforesaid, the sum so received shall be deducted from what said officer would otherwise be entitled to under the first section of this act; and every pension to which said officer is now entitled shall cease after the passage of this act."

Previous to the passage of the act of May 15, 1828, several officers of the continental line had, in consequence of the wounds they had received in battle, been placed on the pension roll, as invalid pensioners; and having availed themselves of the provisions of that act, their pensions, as invalids, were deducted or withheld from the third day of March, one thousand eight hundred and twenty-six.

On the 31st of May, 1831, an act was passed to "amend" that of the 15th of May, 1828, which provides that the latter "shall not be construed to embrace invalid pensions, and that the pension of invalid soldiers shall not be deducted from the amount receivable by them under the said act."

Since the passage of the amendatory act of May 31, 1831, petitions have been presented to Congress from widows and heirs of officers whose invalid pensions had been deducted and withheld under the operation of the act of the 15th of May, 1828, praying for the payment to them of the amount so deducted or withheld; and the committee find that on the 15th of June, 1836, two acts were approved giving the relief asked; one for the relief of the widow of Samuel Gibbs, and one for the relief of the heirs of Richard Anderson. Another similar act, for the relief of the heirs of Moses White, was approved July 26, 1848; and another on the 8th of January, 1849, for the relief of the heirs of William Evans. The committee have not made a thorough examination, and know not but other acts of the kind may have been passed.

From the legislation in the cases alluded to, it would appear that the Commissioner of Pensions did not place the construction upon the act of May 31, 1831, that was intended, or that the terms of the act were so carelessly drawn that they warranted a construction not intended, and the effects of which it required subsequent legislation to correct. If it were intended by that act that the sums which had been deducted and withheld from invalid pensioners, in consequence of their receiving the benefit of the act of May 15, 1828, should be restored to them by the Commissioner of Pensions, the act was not, perhaps, sufficiently plain and explicit, for he has construed the act to have simply a prospective operation; and hence the subsequent legislation in the individual cases above mentioned.

As early as February 9, 1843, an attempt was made in the other house to enact a law which should embrace all the cases where invalid pensions were withheld under the act of May 15, 1828. A report was then made from the Committee on Invalid Pensions favorable to such a law; and accompanying the report was a statement exhibiting the names of the officers from whom amounts had been withheld, the sum withheld from each, &c. The statement then made contained the names of nine officers, and the total amount withheld is stated to be \$9,829 12. Since that period, however, the heirs of two of said officers have obtained the amount withheld, by means of special acts. The chairman having requested a new and correct statement from the Commissioner of Pensions, that officer has furnished the following:

A statement showing the names of the invalid pensioners who were dropped from the rolls in consequence of having availed themselves of the benefit of the act of May 15, 1828; the amount of pensions per month in each case; from what time stopped; if restored to the roll, from what time, to what period payable, and the amount withheld.

Names.	Rank.	Amount of pay per month.	From what time stopped.	If restored to the roll, from what period.	To what period payable.	Amount withheld.
Robert White.....	Lieutenant.....	\$15 11 $\frac{1}{2}$	March 8, 1826	February 9, 1831.....	February 9, 1831.....	\$894 58
John Crute.....	Captain.....	14 73 $\frac{1}{2}$	.....do.....	May 31, 1830	May 31, 1830	750 40
Mordecai Hale.....	Surgeon's mate.	10 50	.....do.....	Not restored.....	December 9, 1832.....	852 60
William Wallace.....	Lieutenant.....	9 06 $\frac{1}{2}$	.....do.....	December 31, 1830....	December 31, 1836....	1,178 06
Philip Stuart.....	Lieutenant.....	17 00	.....do.....	Not restored.....	August 14, 1830.....	907 22
William Barton.....	General.....	30 00	.....do.....	Not restored.....	October 22, 1831.....	2,029 00
Clement Sewell.....	Ensign.....	10 40	.....do.....	Not restored.....	January 7, 1829.....	854 98
James Glentworth.....	Lieutenant.....	8 66 $\frac{1}{2}$	.....do.....	May 31, 1830	May 31, 1830.....	441 40
						7,408 24

In the above statement the name of James Glentworth is added to the list furnished by the Commissioner of Pensions in 1843; while the names of Moses White and William Evans are omitted, being embraced in the special acts alluded to.

Being disposed to admit the correctness of the grounds which Congress has repeatedly assumed in passing the acts for relief in 1836, 1848 and 1849, the committee have agreed to report an amended bill, to embrace all the cases now unprovided for, as shown by the statement of the Commissioner of Pensions.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1852.

Ordered to be printed.

Mr. HUNTER made the following

REPORT:

[To accompany bill S. No. 184.]

The Committee on Public Buildings, to whom was referred a resolution directing them to inquire into the expediency of enlarging, repairing and refitting the principal apartment lately occupied by the library of Congress, so that the same may be entirely fire-proof and capable of extension in harmony with the general plan of the capitol, have had the same under consideration and report:

In connexion with this subject they have examined the report of the architect, Mr. Walter, to the Commissioner of Public Buildings, upon the subject of repairing the library. After an examination of the plan proposed in this report and the drawings which accompany it, they have concurred in the recommendation of the architect, and submit his report, which is hereto annexed, as expressing their views. But being well aware that experience often suggests the propriety of changes in the details of a plan during the process of construction, they have deemed it best to leave it to the discretion of the President to make such changes in the details of the plan as may be consistent with the general arrangement, and yet improve the appearance and usefulness of the room. In view of the necessity for some immediate provision to meet the want of a Congressional library, the committee have deemed it advisable to repair at once the former library room, and for that purpose submit the accompanying bill. In the event of the passage of this bill, your committee recommend that the drawings shall be deposited with the Secretary of the Interior.

ARCHITECT'S OFFICE U. S. CAPITOL,
Washington, D. C., January, 27, 1852.

SIR: In compliance with the request contained in your letter of the 27th ultimo, I have made an examination of the capitol, in reference to the extent of the injury done to the building by the burning of the library of Congress, and the best means of repairing the damage. I have likewise prepared plans for reconstructing the library, which are herewith submitted.

In view of the irreparable loss the country has sustained by the destruction of the old library, I have considered it an indispensable element in the design now presented, to use no combustible materials whatever, in any part of the work; the alcoves, cases, galleries, doors, window-shutters,

ceilings, and the brackets that support them, are all designed to be of cast-iron; the shelves for the books of thick glass, or enamelled iron; the framing of the roof of wrought iron; the sheathing of copper, and the floor of stone. In a library thus constructed, fire will be out of the question, and the materials of which it is formed will not be subject to decay nor deterioration.

By the plans here proposed it is contemplated to enlarge the library so as to embrace the entire western projection; this will give a room of twenty-nine feet six inches by seventy feet two inches at each end of the original library, extending to the roof, lighted by skylights, with two additional apartments, each eighteen feet six inches by thirty-five feet, for private reading-rooms for senators and members of the House of Representatives respectively; thus making a suite of *five* rooms, embracing an extent of three hundred and two feet.

It will not, however, be possible to carry out the entire plan until accommodations are provided in the new wings for the officers of Congress and committees now occupying the north and south rooms of the western projection; I therefore propose to fit up the old library, according to the plans, without changing its dimensions, and to complete the archways intended to lead into the end rooms, leaving a sufficient thickness of wall remaining to separate the library and the said rooms until the proper time arrives for carrying out the entire design.

In this portion of the plan, which, as before remarked, constitutes the reconstruction of the old library, there will be two stories of alcoves, the second story receding three feet from the front of those below, so as to admit of forming a gallery on top with but little projection; the same arrangement will be repeated on the top of the second story alcoves, so as to form a gallery to the third story, which will consist of cases against the wall, with divisions and ornamental pilasters corresponding to the openings below. The galleries will all be protected by continuous railings of iron. The floors of the galleries will consist of cast-iron plates, and the approach to them will be by means of two semicircular stairways formed of iron and recessed in the end walls.

Each of the lower alcoves will be enclosed by ornamental iron gates.

The ceiling will be composed of thin iron plates, cast with deep sunken panels, filled in with enriched mouldings and centre ornaments.

The room will be lighted, in addition to the windows in the west front, by eight skylights, each six feet square in the clear, making two hundred and eighty-eight square feet of glass. Each skylight will be filled in with ornamented glass, forming part of the design of the ceiling, and protected on top by thick plates of glass placed on the line of the roof.

The floor will be composed of marble tiles, the walls plastered, and the interior painted in colors appropriate to the materials of which it is composed.

I propose to warm this portion of the building by means of hot-water pipes enclosed in chambers erected in the present furnace-rooms in the cellars, and connected with boilers for heating the water; the external air to be admitted into these chambers, where it will be warmed and conducted by flues to the library, and such of the adjacent rooms as are heated by the present furnaces. The quality of the heat thus produced is not only unobjectionable, as it regards health and comfort, but it is peculiarly adapted to the warming of libraries, as it retains its original moisture, and is not injurious to the binding of the books, besides being free from dust and other impurities.

The room will be ventilated by means of apertures in the ceiling, opening into the space between the ceiling and the roof, from which the foul air will be extracted by means of an air-shaft, in which a vacuum will be produced by artificial heat.

The execution of the entire plan here proposed will in no way impair the stability of the structure, but rather promote it; none of the main walls will be disturbed, the removal of the arches over the rooms will relieve the outer walls of horizontal pressure, and the aggregate weight of the superstructure will be reduced; all of which are important considerations when it is remembered that the western projection has always had a tendency to settle off from the rest of the building, which is shown by the cracks in the angles on the outside.

The injury to the building produced by the fire is almost exclusively confined to the library. The floor being composed of bricks laid on the arches of the rooms below, and the surrounding walls being of great thickness, extending above the roof in the form of parapets, the firemen were enabled to keep the fire under control and prevent it from communicating to other parts of the building. The walls are, however, so much injured as to make it necessary to take down and rebuild the upper portion of them, including the entire parapets, and to repair them generally throughout.

The western front has sustained so much injury around the windows, as to make it necessary to take out the stone work between the pilasters as high as the bottom of the upper panels, and substitute it with new material; the panels and sculpture appear to be uninjured; and as far as I can now judge, they may remain.

The inner portions of the columns have suffered very seriously; the injured parts may, however, be cut out and replaced by new stone, without removing them, as the repairing will be obscured by repainting them.

I would further suggest, in connexion with these improvements, the removal of the stairway leading into the attic, in front of the main door of the library: this stairway is of but little use, as both ends of the building have other convenient approaches; I therefore propose its removal, with all the columns and archways connected with it. The stairway by which the rotundo is approached will then be better lighted, the approach to the library will be free and light, and the library door will be in full view from the rotundo. This door may be richly embellished with the columns and entablature which now support the stairs in question, and a rich marble balustrade may be placed around the stairway leading from below, which will form a tasteful and convenient improvement. This colonnade, with the low arches leading to the library, are the most objectionable features of the building, besides interfering with the passage of light to the stairway most used by the members, and also to the approach to the library; I can, therefore, see no reason why they should not be removed.

I have estimated the cost of carrying out that portion of the plan now proposed, embracing the space heretofore occupied by the library, together with all the aforementioned repairs and alterations, the whole of which are to be executed of incombustible materials as hereinbefore stated, and find that it will amount to \$72,500.

I am, sir, very respectfully, your obedient servant,

THO. U. WALTER,
Architect U. S. Capitol.

WILLIAM EASBY, Esq.,
Commissioner of Public Buildings.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1852.

Ordered to be printed.

Mr. NORRIS made the following

R E P O R T :

[To accompany bill S. No. 187.]

The Committee on Patents and the Patent Office, to whom was referred the petition of Peter U. Morgan, administrator of the estate of John Arnold, deceased, and George G. Bishop, for the extension of patents for forming the web of cloth, of wool, hair or other fibrous substances, without spinning or weaving, report :

It appears, from the papers submitted to the committee, that George G. Bishop, of Norwalk, in the State of Connecticut, commenced experimenting on the forming of the web of cloth without spinning or weaving, in the year one thousand eight hundred and twenty-eight; and after spending considerable time, he became satisfied that the fibres of wool, hair or other fibrous substances should be made to cross each other, in their layers, at right-angles. With a view of effecting this object he called in the aid of John Arnold, who succeeded in inventing and constructing a model of a machine, for which, together with the arrangement of carding-machines to be used in connection therewith, letters patent were granted to him on the 15th day of July, 1829; the said Arnold & Bishop then supposing that a machine constructed after such model would work successfully. That after the patent was granted as aforesaid, the said Arnold & Bishop caused a machine to be constructed after said model, and in conformity to the specifications contained in the patent, but that such machine so constructed would not work, and that a working machine could not be constructed after such model and specifications, because the invention was incomplete, which was for the first then ascertained; and that it was not until the fall of the year 1836 Messrs. Arnold & Bishop succeeded in so far perfecting such invention as to produce a working machine, to effect the object aforesaid. For which improvements a patent was granted to them on the 20th day of October, 1836, which, together with the previous patent, cover but one machine and one invention.

That for ten years thereafter, fabrics of various kinds were manufactured quite imperfectly, for want of knowledge of the process, and only about 30 inches wide. In consequence of which, the sale of the fabrics manufactured was very limited, and always at a loss, which, with the large amount expended in getting up machinery and experimenting therewith, proved ruinous to all concerned in it.

That in the year 1846, Mr. Bishop further perfected the invention, and

got up machinery by which cloth was made 48 inches wide. Which improvement, together with the improvement which he had made in this new, and before untried process of making cloth for wearing apparel, resulted in a more extended sale of the cloth; and the business became somewhat profitable. But cloth for overcoats, which is the only article yet manufactured to advantage by this process, is required, by the trade, to be 54 inches wide. To meet this object, by further carrying out the principle, it became necessary to get up a new set of enlarged machinery, at a cost of over \$17,000, which was perfected and put into operation about a year ago; since which time the cloth has been manufactured of the desired width, more uniform, and much improved in finish, rendering it an article of great national interest, inasmuch as it is sold from 25 to 30 per cent. cheaper than a like article manufactured by spinning and weaving.

The committee having examined specimens of the cloth manufactured at the several periods above mentioned, and having made inquiries respecting it, are fully satisfied as to the gradations through which this new invention and new process of manufacturing cloth has passed in reaching the successful and valuable result, and that it is new, valuable and useful.

That the said patent granted to Messrs. Arnold and Bishop was extended by the Commissioner of Patents for the term of seven years from the 20th day of October, 1850. And your committee have examined exemplified copies of the papers used to obtain such extension, furnished by the Commissioner of Patents, together with the report and the decision thereon. It appears from such papers, that on the 7th day of October, 1850, Messrs. Arnold and Bishop were losers for expenditures on account of said patent rights, experimenting thereon, &c., with interest, the large sum of \$33,520 79. The report made by the examiner to the Commissioner of Patents, on that occasion, states—

“That at the time of granting said patent, the invention covered by it was new, and that it is also useful and valuable to the public. That at the time of making said invention, the branch of manufacture to which it belongs was in its infancy, and that great care, labor and expense were necessary in bringing it to that state of perfection which is always necessary to the production of profitable results.

“That owing to these circumstances and others beyond their control, the inventors and their representatives have failed to receive the remuneration for their invention to which they are justly and reasonably entitled.—Indeed, they have not been reimbursed the expenses they have incurred in money and labor in and about said improvements.”

The petitioners were unable to sell the privilege or right of manufacture to any person, in consequence of the failure of their early experiments, and the large amount required for machinery; being, as before stated, about seventeen thousand dollars for one set, besides from fifteen to twenty thousand dollars for a mill, &c. In the uncertainty which attended their operations, the first patent was suffered to expire. The manufacture, up to that period of time, had not proved successful, and therefore two of the items of proof required to entitle the applicant to an extension of patent by the Commissioner of Patents—to wit: 1st, that it was useful; 2d, that it was valuable and important to the public—could not be made at that time.

The inventions are so closely connected, that the renewal and extension of both patents becomes necessary to enable the parties to derive an adequate

remuneration for their time, ingenuity, labor and expenses in perfecting and bringing them into use.

No inconvenience can result to the public, or injury to any individual, by the renewal and extension of the first patent, because the invention was imperfect, and a working machine could not be constructed, except in connexion with what is covered by the second patent, and as the machine is not in use by any other persons than the petitioners and those that are associated with them. The law authorizing inventors to file caveats was not passed when Mr. Arnold took out his patent, and there was a reason therefore, perhaps, for taking his patent before he had tested his invention by building a working machine. He undoubtedly deemed the invention very valuable, and had reason to fear being deprived of it should he expose the principle, as he would be compelled to do in building a working machine; and therefore the seven years which elapsed between that time and the perfection of the machine so as to work, ought not, in the opinion of the committee, be taken against him. And inasmuch as the invention was not perfected and carried out, so as to make cloth of the proper width to be really and permanently valuable, until about a year ago, your committee submit, whether the time ought not to be counted from the period when the invention and machinery was so perfected, about a year ago, and not from an earlier period.

In view of all the facts presented, your committee consider this one of the great inventions of the age, as it enables the manufacturer to produce cloth at a cost so greatly reduced, as to take the place of heavy imported cloth to a considerable extent, and thus furnishes an additional demand for wool, one of the great staples of this country, of over 700,000 pounds annually, with the prospect of a greatly increased consumption of this article as this process of manufacturing is further perfected. And they have no doubt, judging from the improvements which have been made within the last two or three years, and since the principle has been better understood, that a much higher perfection will be attained, so that fabrics will be made not only for wearing apparel generally, but for various other purposes equally advantageous to the country.

Considering these inventors, therefore, as great public benefactors, and believing that the petitioners are justly entitled to the renewal and extension prayed for, in order to give them the recompense which the patent laws and the constitution designed to secure to inventors, the committee are of opinion that the two patents cover but one invention, and that the first mentioned patent should be revived and extended, and the second extended, both for the term of fourteen years, and report a bill in conformity thereto.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1852.

Ordered to be printed.

Mr. WADE made the following

REPORT:

The Committee of Claims, to whom were referred certain documents relative to the claim of William S. Waller, to compensation for disbursing of treasury notes for the government, report:

That Mr. Waller claims a compensation of one and a half per cent. for selling or disposing of \$160,000 of treasury notes, in the years 1812 and 1814. He was, during the period embracing the transactions, cashier of the Bank of Kentucky; but his impression is that the bank refused to take the notes in question, being already in advance to the treasury; and for that reason they were sent to him, to be disposed of in his private capacity, for the use of the government. He says he is confident in this impression by the fact, that after diligent search, no instructions to him, as cashier, are found on the files of the bank, which would have appeared had he been officially employed; nor does he find any communication from the Secretary of the Treasury on the subject among his private papers.

He does not think there was any stipulation for compensation for this service, nor did he, at the time, expect any; and would not have applied for it, if he had not been informed that others had been paid for similar services, particularly the late Governor Blount, of Tennessee.

The Secretary of the Treasury, to whom the papers have been referred for information, says, that in consequence of the destruction of the files and records of the department, in 1833, he is unable to furnish any detailed information in the matter. He says, however, "that the issues of treasury notes, on account of banks, were invariably made in the names of the cashiers at the time."

The Register of the Treasury says, that those notes "appear, from the records of that office, to have been issued in the name of William S. Waller, and that the amount thereof was paid into the treasury by him as cashier of the bank of Kentucky."

Governor Crittenden expresses the opinion, that the services of the claimant were entirely distinct from any of his duties as cashier of the Bank of Kentucky, and his impression is that agents were paid, on settlement of their accounts, for like services.

T. B. Temple, auditor, certifies, that upon an examination of the accounts of the old Bank of Kentucky, he finds entries made to the credit of T. F. Tucker, Treasurer United States, at various times, "by cash, for treasury notes, amounting to \$160,000."

The foregoing is believed to be a true statement of the facts, as shown

by the papers on file, and of all the facts that have come to the knowledge of the committee; and these rest principally on the vague and uncertain recollections of the claimant himself, more than a quarter of a century after the time when they transpired.

It is not pretended that there was any contract or understanding with the government that he should be paid, nor did he expect any compensation for these services at the time they were rendered; but having heard that others had been paid for like services, he thinks that equal justice requires that he should be paid also. But there is no evidence to show that others were paid for like services; and, from any thing in the proof, such other persons might have had a contract with the government for compensation. At all events, if those services were expected to be gratuitous at the time they were rendered, the claimant cannot, at will, change such gratuity into an obligation at this late period. Nor would this view of the case be changed though it should be shown that the government had paid other claims of like character. The record of these transactions having been so long destroyed, renders it very difficult, at this time, to ascertain what their precise character was. After such great lapse of time, strong evidence should be produced to overcome the presumption that arises against such a claim; and sufficient reasons should be shown why it has been so long delayed. Your committee are clearly of opinion that no such proof has been produced, and no such reasons shown in this case. They therefore recommend that the prayer of the claimant be rejected.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1852.

Ordered to be printed.

Mr. PRATT made the following

REPORT:

The Committee of Claims, to whom was referred the petition of E. Farnstedt and Schumacher, have had the same under consideration, and now report :

That the memorialists, who are merchants residing in the city of New York, in November, 1848, imported into that port a number of cases of colored prints, and made the legal entry for warehousing the same, securing the duties by the execution of a bond in the form prescribed by the Secretary of the Treasury.

That in December, 1848, whilst the goods remained so warehoused, they sold the same for export to the port of New Orleans; and to enable the purchasers to withdraw the merchandise from the warehouse at New York to be shipped to New Orleans, the petitioners executed a bond to the United States in the sum of eleven hundred and fifty dollars, conditioned that they would, within four months thereafter, produce to the collector of the port of New York satisfactory evidence that said goods had been deposited in a public warehouse in New Orleans; that the merchandise was shipped in a vessel which sailed from New York for New Orleans in December, 1848, and which, with her cargo, was wholly lost at sea; that they applied to the Secretary of the Treasury to have their bond cancelled, but that the Secretary decided that he was not authorized by law to release the bond, and that the memorialists have been subsequently compelled to pay the sum of six hundred and twenty dollars and twenty-six cents, which they pray may be returned to them. It further appears, that prior to the payment of the bond, a bill was passed by the House of Representatives authorizing the bond to be cancelled, which was not acted on by the Senate.

The refusal of the Secretary of the Treasury to cancel the bond upon proof of the loss of the goods at sea, was predicated upon the admitted fact, that under the existing law the government became entitled to the duties when the goods were placed in the public warehouse; and that the removal of the merchandise for the purpose of transportation to some other port in the United States did not convert the absolute right to the duties to one contingent upon the safe arrival of the goods at the port to which they were shipped.

Your committee are clearly of opinion that if the memorialists are entitled to have their duties paid by them in this case refunded, a general law should pass authorizing the Secretary of the Treasury to refund to all

merchants who have heretofore paid duties under similar circumstances the amounts so paid by them. Your committee are also of the opinion that if such duties are to be refunded, a law should also pass authorizing the Secretary of the Treasury, in all cases which may hereafter occur, to cancel the bonds which may be given to secure the payment of the duties, where the goods are lost at sea : or, changing the condition of the bonds, making the duties payable upon the safe arrival of the vessel at the port to which the goods may be reshipped. If such a law should be passed, it would prevent future insurance in such cases. Your committee have no means of forming an estimate of the amount which the government would be required to refund, if the principle involved in this application should be sanctioned by Congress. Being of the opinion that this memorial would have been more appropriately referred, either to the Committee on Commerce or to the Committee on Finance, they beg to be discharged from its further consideration, and that it may be referred to one or the other of those committees.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1852.

Ordered to be printed.

Mr. PRATT made the following

R E P O R T :

The Committee of Claims, to whom was referred the petition of S. H. Duff, have had the same under consideration, and now report :

That by the statement in the petition, it appears that the memorialist was employed in the quartermaster's department at Corpus Christi during the Mexican war; that General Taylor issued an order prohibiting the introduction of ardent spirits, and directing the seizure and confiscation of all which should be brought in without his permission. The petition further states that, by the order of General Taylor, all the confiscated spirits were directed to be sold, and one-half of the proceeds of sale to be given to the informer. The petitioner further alleges that he was employed by Captain Ogden, of the quartermaster's department, to examine all the barrels entering the Rio Grande, with the stipulation, on the part of Captain Ogden, that in addition to his pay of \$50 per month as an officer, he should receive one-half the proceeds of all the liquors which might be seized by him. He also alleges that he seized large quantities of liquor, a part of which was returned by General Taylor to the owners thereof, and that the residue was consigned, in the name of the petitioner, to the proper public officer at New Orleans; and that his half of the spirits so seized by him was worth eleven hundred dollars, the amount which he now claims of the government.

The petitioner states in his letters, which are filed with his memorial, that no part of the liquor consigned in his name had reached its destination, or was in the possession of the public officer to whom it had been directed; and upon this statement he claims to be paid by the United States for the value of his half of the spirits alleged to have been seized, &c., by him.

The petitioner has furnished no evidence of the existence of the order of General Taylor, nor of his employment by Captain Ogden, upon which his claim is chiefly predicated.

Your committee further report that they have been furnished with no evidence (other than the statement of the petitioner) that he did seize any spirituous liquors, or that any were confiscated; and without deciding whether a public officer would be entitled, under the circumstances detailed in the petition, to any compensation beyond his pay as an officer, they are compelled to report against this claim, because of the absence of all proof to sustain it; and they respectfully ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 5, 1852.

Ordered to be printed.

Mr. SOULE made the following

REPORT:

[To accompany bill S. No. 191.]

The Committee on the Post Office and Post Roads, to whom has been referred the memorial of W. C. Templeton, making proposals for the carrying of the United States mail between New Orleans and Vera Cruz, via Tampico, in steam-vessels, ask leave to report:

That the act of March 3, 1845, providing for the transportation of the United States mails between the United States and foreign countries, had clearly in contemplation, that a line would be established between the points embraced in the proposals submitted by the memorialist. The 8th section of that act specially directs "the making of contracts for the transportation of the mail from place to place, in the United States, in steamboats, by sea, and on the Gulf of Mexico, and on the Mississippi river up to the city of New Orleans." This part of the act, being deemed obscure, has to this day remained a dead letter, and the consequence has been an almost entire suspension of all regular intercourse with our sister republic. The subject, however, has at different times been pressed on the consideration of Congress. The Secretary of the Navy, in his report of 1848, remarks as follows:

"As a more interesting part of the system, (alluding to the system created by the act just quoted,) I recommend that authority be given to contract for the transportation of the mail between New Orleans and Vera Cruz, in steamships convertible into war steamers. It will tend, by promoting social and commercial intercourse, to consolidate friendship between the United States and Mexico, promote the introduction of our great staples and manufactured goods into Mexico, and invite her rich products of specie to our cities. It will add, too, to the mails on all the connecting lines, increase the postal profits, and make available for public defence an additional number of war-steamers."

Referring to the same subject, the President of the United States, in his annual message of that year, said:

"I recommend to your favorable consideration the establishment of the proposed line of steamers between New Orleans and Vera Cruz. It promises the most happy results, in cementing friendship between the two republics, and extending reciprocal benefits to the trade and manufactures of both."

Our commercial relations with Mexico have, within these few years past, so decreased that our exports to that country, which in 1835 were

\$9,029,221, had fallen in 1850 to \$2,412,827; and our imports, which in 1835 amounted to \$8,343,181, were reduced in 1850 to \$1,560,166.

Such is the deplorable state of our trade at this day with Mexico. It is mainly attributable to a want of speedy and reliable means of communication between the two countries, and must, if permitted to prevail much longer, so alienate them from each other that they will soon become more strangers than if they were separated by boundless seas and impassable continents. Yet one cannot but be struck with the many and important advantages which the establishment of a line of communication, placing the two countries in closer contact, would confer on both. While the intercourse thereby created might awaken our neighbors to a consciousness of the inexhaustible resources by which they are surrounded, and of their ability, by proper application and industry, to turn them to the improvement of their physical, social and political condition, it would tend also to foster and strengthen those kind and friendly relations which it should be our wish, which it is certainly our interest, to cultivate and extend. It would divert from England to our shores a great proportion of the millions of silver which we are at present so much in need of, secure to us an ample supply of dyestuffs and other commodities, enlarge our commercial marine, and increase our freights and tonnage.

Prompted by these considerations, and being of opinion that the proposals made by the memorialist are liberal and would secure, if attempted, a speedy realization of the object sought to be attained, the committee recommend to the favorable action of the Senate the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1852.

Ordered to be printed.

Mr. GEYER made the following

REPORT :

[To accompany bill S. No. 193.]

The Committee on Pensions, to whom was referred the petition of Robert Armstrong, report :

That on the examination made by the committee, of the claim of the petitioner to a pension, and the evidence accompanying his petition, they find no good ground to differ from the opinion expressed by the Committee on Pensions in the report made to the Senate on the 22d of August, 1850; they therefore adopt that report, and recommend the passage of the bill herewith reported.

IN SENATE—August 22, 1850.

The Committee on Pensions, to whom was referred the memorial of Robert Armstrong, report :

That the said memorial was first presented to the Senate, and referred to the Committee on Pensions, on the 18th day of December, 1845; that on the 3d of February, 1847, Mr. Crittenden, by unanimous consent, had leave to bring in a bill for the relief of General Robert Armstrong, which bill, on his motion, was referred to a select committee of three, and was reported from said committee without amendment, on the 12th of the same month.

It further appears, from an endorsement on the envelope containing the papers of the memorialist, that the Committee on Pensions, on the 11th of August, 1848, were discharged from the further consideration of the case. The bill reported from the select committee on the 12th of February, 1847, directs the Secretary of War "to place the name of General Robert Armstrong, of Tennessee, on the roll of invalid pensioners, and to pay him a pension at the rate of seventeen dollars a month from the 23d day of January, 1814, during his natural life."

On a careful examination of the proofs filed with the memorial of Robert Armstrong, the committee deem his claim to the bounty of the government to be well established and as highly meritorious; and they cannot account for the delay in extending to him the benefits of existing laws, only by sup-

posing that it may have been occasioned by a disagreement among the members of the Committee on Pensions touching that provision of the bill, above alluded to, which relates to the commencement of the pension.

On the 23d of January, 1814, the memorialist, then a lieutenant, in command of a company of volunteers called the Artillery Guards, and under General Jackson, was severely wounded at the battle of Enotochopee creek, in which battle he and his company behaved in the most brave and gallant manner. General Jackson, in his certificate, written with his own hand, and dated the 16th of May, 1845, says: "I do further certify, that in the battle of the 23d of January, 1814, called and known by the name of Enotochopee creek, the shameful flight of my rear guard producing panic and confusion in my whole army, it was the unflinching bravery of Lieutenant Armstrong, acting as captain of the volunteer Artillery Guards, that saved my army from total and shameful defeat, and all my wounded from horrid massacre. This little Spartan band, of about twenty-five in number, met and bravely faced upwards of five hundred of the bravest Creek warriors, checked them in their desperate onset, and at one fire of the savage host I saw seven of this little heroic band fall—among them was Lieutenant Robert Armstrong, severely wounded. He fell by the side of his cannon, exclaiming, 'Some of you, my brave fellows, must perish, but save the cannon!' They did save the cannon, and my whole army from shameful and total defeat, and my brave wounded from barbarous massacre."

From the testimony of the two surgeons, accompanying the memorial, it is shown that Armstrong was wounded by a ball in his left hip, which penetrated deep into the muscles, and lodged near the spine, where it now remains, rendering his degree of disability total.

The committee, in consideration of the gallantry of the memorialist, and the important service rendered by him at the time he received his wound, are unanimous in the opinion that he should be placed on the list of pensioners, at a rate exceeding that usually allowed under the existing general laws, and his pension to commence at the time he completed this proof of his claim to a pension. The committee cannot, in any case, find a sound reason for departing from the principle established by the act of April 10, 1806, and continued by subsequent general acts providing pensions; and, in the case of the memorialist, therefore, they do not deem it expedient to extend his pension back to the period when he was wounded. In conformity with these views, they report a bill for his relief.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1852.

Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT:

[To accompany bill S. No. 194.]

The Committee on Pensions, to whom was referred the petition of Jacob Young, report:

That the petitioner, who was a soldier in the war of 1812, asks a pension on account of the effects of a wound which he received at the battle of Maguago, in the vicinity of Detroit. He belonged to a company of Ohio volunteers attached to Colonel McArthur's command; and has, as he states, omitted to make application for a pension until this late period, because he has been able to support himself. He now, in consequence of increasing disability from his wound and age, asks the aid from government to which he deems himself entitled. He was wounded in the shoulder by a rifle ball, which has never been extracted. The committee deem the evidence, both in regard to his service and the nature of his wound, satisfactory, and such as will justify the passage of an act for his relief; and they herewith report a bill for that purpose.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1852.

Ordered to be printed.

Mr. ATCHISON made the following

R E P O R T :

[To accompany bill S. No. 198.]

The Committee on Indian Affairs have examined the claim of Lewis A. Thomas and Thomas Rogers, against the government of the United States, for professional services in defending two Indians of the Sissiton band of Sioux, indicted for the murder of white men in the district court for the Territory of Iowa, in the year 1845, and find the following facts:

In the summer of the year 1844, an attack was made by a war-party of Sioux of the Sissiton band, upon a company of white men from the State of Missouri, in charge of a drove of cattle destined to be delivered at Fort Snelling. The white men, it seems, had missed their way to the fort, and travelled some hundred or two hundred miles north of the fort, where they were met by the war-party of Sioux, and attacked by them, as it was afterwards ascertained, under a mistake; several white men were killed before the mistake was discovered. Two of the Indians engaged in the affair were taken by Captain Sumner, in command of a company of dragoons, and delivered over to the civil authorities of the Territory for trial. The Indians were indicted in the district court for the Territory of Iowa, held in the county of Dubuque, on the 11th of August, 1845. The petitioners were assigned by the court as counsel for the defence of said Indians; which duty they performed in a very satisfactory manner. It is also shown that they were at considerable expense in procuring testimony for the prisoners; for which services and expense they claim from the United States the sum of five hundred dollars.

The committee are of opinion that, inasmuch as the Indians receive no annuities from the government, and have no means of compensating the claimants for their services, or indemnifying them for money expended in their defence, the government of the United States, both as a matter of equity and policy, should assume and pay the demand of the petitioners; and for that purpose, they report a bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1852.

Ordered to be printed.

Mr. MALLORY made the following

REPORT:

[To accompany bill S. No. 200.]

The Committee on Naval Affairs, to whom were referred the memorial and accompanying papers of Thomas Pember, praying to be paid the difference between the compensations of a captain's clerk and a purser in the navy for a period stated, have had the same under consideration, and report:

That the certificates of Lieutenants Jas. H. Ward and Timothy A. Hunt, respectively commanding the United States ship *Electra* and the United States steamer *Vixen*, show that the memorialist was captain's clerk on board the steamer *Vixen* from the 23d day of October, 1848, to the 20th day of June, 1850, and that during the same period he performed all the duties of a purser on board the vessel; that the labor thereof was "excessively arduous frequently, and for a portion of the time beyond all precedent," and that he was called upon to perform these duties because Lieutenant Commanding Ward's own duties, as commander of the vessel, rendered it impossible for him to give them his attention. And that the memorialist was captain's clerk on board the ship *Electra* from the 1st July, 1847, to the 28th February, 1848; and that he performed also, during the same period, the duties of purser, which were arduous, and which were devolved upon him by Lieutenant Hunt, because the command of the ship, in active service in the Gulf of Mexico, required his undivided attention. The committee deem the memorialist entitled to relief, and report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1852.

Ordered to be printed.

Mr. JONES, of Iowa, made the following

R E P O R T :

[To accompany bill S. No. 203.]

The Committee on Pensions, to whom was referred the petition of David P. Weeks, report:

That the petitioner lost his left arm in the war with the Florida Indians, and was in consequence placed on the pension list, at \$3 per month.

On the 4th of September, 1846, he was employed in the Ordnance department, and continued thus employed until the 4th of March, 1850, during which time his pension was stopped by the Commissioner of Pensions, who deemed himself authorized to do so by the act of the 30th of April, 1844; which provides that "no person in the army, navy, or marine corps, shall be allowed to draw both a pension as an invalid and the pay of his rank or station in the service, unless the alleged disability for which the pension was granted be such as to have occasioned his employment in a lower grade, or in some civil branch of the service."

In a letter from the Commissioner of Pensions to the chairman of the committee, dated December 30, 1851, it is stated that when employed in the Ordnance department, "Weeks was *not an enlisted soldier*," but "*held his appointment*" by "authority vested in the Secretary of War;" and in reply to further inquiries made by the chairman of the committee, the Commissioner of Pensions, in a letter dated February 6, 1852, refers to the act of the 5th of April, 1832, for the organization of the Ordnance department, as furnishing some portion of the authority by which the pension of the petitioner was suspended.

But neither of the acts above referred to, in the opinion of the committee, conveys the authority to suspend the pension of any person employed in the Ordnance department, unless the pensioner belongs to the army, navy, or marine corps. The petitioner was neither an officer, non-commissioned officer, nor private in the army, when employed, nor did he enlist during his employment. The Commissioner of Pensions states that the petitioner held the appointment of ordnance sergeant during his employment, by authority vested in the Secretary of War. The act of April 5, 1832, authorizes the Secretary of War "to select from the sergeants of the line of the army," &c., "as many ordnance sergeants as the service may require;" but that act conveys no authority to the Secretary to appoint any citizen, not belonging to "the line of the army," to the station or office of ordnance sergeant;

and if the petitioner was required, during the time he was employed in the Ordnance department, to perform the duties of sergeant, that fact furnishes no legitimate reason for suspending his pension.

The committee believe that the petitioner was engaged under the authority given to employ citizens to labor in the Ordnance department, who do not belong to the army, navy, or marine corps; and therefore, the construction given to the acts alluded to, by which his pension was discontinued, is erroneous. By no existing law can a citizen, not enlisted, and employed in the Ordnance department, claim a pension for a hurt received while thus employed; neither by any existing law can a person not belonging to the army, &c., entitled to and receiving a pension, be deprived thereof on obtaining employment in said department.

The committee deem the petitioner entitled to relief, and herewith report a bill providing therefor.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1852.

Ordered to be printed.

Mr. RUSK made the following

REPORT:

[To accompany bill S. No. 204.]

The Committee on the Post Office and Post Roads, to whom was referred the petition of Guion and McLaughlin, praying for compensation for carrying the mail, &c., have had the same under consideration, and respectfully report:

That the facts of the case are fully and faithfully set forth in the report of Mr. Mason, chairman of the Committee of Claims at the second session of the thirtieth Congress, which they ask leave to adopt.

Your committee, therefore, respectfully recommend the passage of the accompanying bill.

IN SENATE—February 16, 1849.

The Committee of Claims, to whom was referred the "petition of Guion and McLaughlin, praying compensation for carrying the mail," &c., have had the same under consideration, and report:

It appears that the petitioners entered into contracts with the Post Office Department, to carry the mail of the United States from "Raleigh, North Carolina, by Middle Creek and Averysborough, to Fayetteville, six times a week and back, in two-horse coaches," the Postmaster General reserving the right to order the great northern and southern mail on this route at \$10,800 per annum. Also from "Fayetteville, North Carolina, by Dane's Springs, Randalsville, Montpelier, Laurel Hill, and Brightsville, to Cheraw, daily and back in two-horse coaches," the Postmaster General reserving the right to order the great northern and southern mail on this route as advertised.

That on the 3d of December, 1844, it was ordered that the great mail should be put upon each of the above routes, as follows: "1844, December 3. Ordered to put the great mail on this route at \$10,800 per annum, agreeably to contract, to go into effect 1st January, 1845. 1845, December 20. Ordered that the allowance to be entered into contract, to be made in case the new service is discontinued before expiration of contract, shall be two months' extra pay, on account of the peculiar nature of the service, and the large outlay and expense to be incurred to stock route," &c.

That on the 6th of February, 1845, the great mail was discontinued on each route ; and it was ordered in the case of Guion, that the two months' extra pay contracted for should be estimated on the amount saved, and not on the entire sum paid for the greater service, in the following words: "1845, February 6. Annul the great mail service on this route, ordered 3d December, 1844, and allow two months' extra pay, according to contract, on the amount saved, \$7,800, and restore the ordinary mail service in two-horse coaches at \$3,000 per annum." In the case of McLaughlin's contract to carry the great mail from Fayetteville, North Carolina, to Cheraw, for \$13,320 per annum, the order endorsed thereon is as follows: "1845, February 6. Annul the great mail service on this route, ordered 3d December, 1844, and allow two months' extra pay, according to contract, on the amount saved, \$9,000 per annum, and restore the ordinary mail service, in two-horse coaches, at \$4,320 per annum."

The petitioners appeal to Congress to be paid the difference between the two months' pay on such contracts saved by government, and like pay on the larger sums for the larger service.

The contract was made for the lesser service only, with the right reserved to the department at its option to increase it, as before stated ; and the terms of the contract, which appear to have been usual in all cases, are, that the "Postmaster General may discontinue or curtail the service, he allowing *one* month's extra pay, on the amount dispensed with."

The stipulation to allow the contractors in this case *two* months' extra pay instead of one, has reference only to a subsequent order for the greater service, and its subsequent discontinuance. The terms of the order are, that "the allowance, &c., shall be two months' extra pay, on account of the peculiar nature of the service, and the large outlay of expense to be incurred to stock route," &c.

It seems that this stipulation, by which the contractors were bound (if so ordered) to carry the great mail, had reference to an anticipated difficulty with the "Wilmington and Raleigh Railroad Company," then carrying the great southern mail ; and it was well understood, that should this mail be thrown on the contractors, it would involve a heavy outlay in coaches and horses, which would involve them in a proportionate loss, should the same be discontinued at an early day.

It so resulted, as it appears this new service was ordered on the 3d of December, 1845, and discontinued on the 6th of February, 1846, a period of only two months.

Upon the face of the contract, and the terms of the orders referring to it, the committee were disposed to consider that the contractors would, in strictness, be limited to the extra pay on the "amount dispensed with." But from the evidence of William H. Dundas, esq., who, at the time of these contracts, was principal clerk in the contract office, and who was summoned before the committee at the request of the petitioners, they were satisfied that such was not the construction placed upon them, by either of the contracting parties, when the contracts were made, but that the department, as well as the contractors, intended that the extra pay should be on the larger sums, which were stipulated for the new and larger service.

They annex hereto the evidence of Mr. Dundas, and report herewith a bill for the relief of the petitioners.

ROOM OF THE COMMITTEE OF CLAIMS, SENATE U. S.,
February 9, 1849.

William H. Dundas, chief clerk of the Post Office Department, attended the committee on being summoned, and on interrogatory states that he is chief clerk in said department; that, at the date of the contracts with Guion and McLaughlin for carrying the mails in North Carolina, he was principal clerk in the contract office. He recollects distinctly that in reference to the compensation that should be allowed said contractors, in the event of the larger service stipulated in said contracts being discontinued by the department, it was insisted on the part of the contractors that because of the great loss that would thereby be devolved on them, from the large stock they must provide in coaches and horses, they should receive three months' pay, instead of the usual allowance of *two months'* pay. That while the said contractors were in the department and in the room of the Postmaster General, (then Mr. Wickliffe,) he was instructed, he thinks by Mr. Hobbie, to ascertain, by computation, what two months' pay would amount to upon the contracts aforesaid, at the rates and prices then set down. This was done by deponent by computing the same on the larger sums to be paid respectively for the larger service, and not upon the difference between the said sums and the reduced rates for the reduced service; this computation was made by deponent in the presence of said contractors.

Some two or three days after this, the said contractors being again at the department, one of them came into deponent's room from that of the Postmaster General, and requested him to make said computation over again, stating that the first paper had been mislaid or lost. This deponent did, in the same way and on the same basis with the first; he handed this last paper to said contractor, who took it out with him to the room, deponent thinks, of Mr. Hobbie, First Assistant Postmaster General and chief of the contract office.

Deponent further states, in answer to interrogatories, that after said contracts were made, he understood from the contractors that they were made upon the computations aforesaid furnished by deponent; and he afterwards heard conversations between the Postmaster General and the contractors, in which the former was urging upon them the necessity of making ample provisions for the larger service, &c., and there was no dispute or reference to the amount as computed by the deponent. He adds that he always entertained the impression that the contracts were made in reference to the said mode of computation for the two months' pay, and had he ordered it, he should have ordered it accordingly.

He adds further, that he never heard the question raised as to which mode of computation should govern the execution of the contract; that is to say, he never heard this, either from the contractors or the department, whilst the contract was in progress.

W. D. DUNDAS.

Attest:

J. M. MASON, *Chairman Committee of Claims.*

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1852.

Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT:

[To accompany bill S. No. 208.]

The Committee on Pensions, to whom was referred the petition of Barbara Reily, report:

That the petitioner is the widow of Captain William Reily, an officer who served in the revolutionary war, and was placed on the pension roll under the act of the 18th of March, 1818, at the rate of twenty dollars per month, commencing the 23d of March, 1818, and who was paid his pension to the 4th of September, 1819. It appears, by a letter of the Commissioner of Pensions to the chairman of the committee, that in April, 1820, his name was stricken from the roll by the Secretary of War in consequence of his not being in indigent circumstances. In July, 1824, he died.

The petitioner now claims that her deceased husband had, under the act of 1818, a vested right to the pension at the rate of twenty dollars per month during his life, and prays that payment be made to her at that rate, from the time when her late husband was last paid to the day of his death.

The act of 18th March, 1818, granted a pension to each officer, non-commissioned officer, musician, and private soldier, who served in the revolutionary war, for a period and in a manner specified in the act, and who "by reason of his reduced circumstances in life shall be in need of the assistance of his country for support." By the terms of this act, the right of an applicant to a pension depends upon the existence of the necessary circumstances mentioned; and unless the act of the Secretary of War, in placing the name of an applicant on the pension roll, is conclusive of that fact, it cannot be claimed that the right to the pension vested so as to exclude all inquiry into the facts.

In the opinion of the committee, the placing the name on the pension roll has no such effect under the act of 1818; but it is entirely competent for Congress to cause the facts upon which the pension depends to be inquired into and determined upon evidence; and this was the object of the act of the 1st of May, 1820, which provides that no person who then was, or who might be thereafter placed on the pension list by virtue of the act of the 18th of March, 1818, should, after the payment of that part of the pension which became due on the 4th of March, 1820, continue to re-

ceive the pension granted by said act until he should have exhibited to some court of record a schedule of his property, verified by oath, which schedule and oath, duly authenticated, were required to be exhibited to the Secretary of War; and it is made the duty of the Secretary, upon receipt of the schedule, to cause to be struck from the pension list the name of every person who, in his opinion, is not in such indigent circumstances as to be unable to support himself without the assistance of his country.

This act, in the opinion of the committee, divests no vested right, and is not unreasonable in its requirements. It merely requires the production of evidence of the fact upon which the right to the pension depends, and that evidence of a kind which every pensioner might readily furnish. It only suspends the payment of the pension until the evidence is exhibited, and then submits it to the judgment of the Secretary of War to decide on each case, whether the necessitous circumstances exist which entitle the party, under the act of 1818, to a pension.

It does not appear that the late husband of the petitioner was at any time in such necessitous circumstances as to need the assistance of his country for support, nor is it alleged that he in his lifetime complied with the act of 1820, or furnished any of the evidence required by that act. Upon the facts, therefore, as presented, it does not appear that the deceased husband of the petitioner was entitled to a pension after the 4th of March, 1820; but as the act of May, 1820, contemplates the payment up to that date, the committee conclude that it ought to be paid to the petitioner, and report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1852.

Ordered to be printed.

Mr. DOWNS made the following

REPORT:

[To accompany bill S. No. 213.]

The Committee on Private Land Claims, to whom was referred the petition of Edward Holt, report:

The petitioner prays that Congress will grant him a right of preëmption on the land on which he has settled, which is on land reserved for military bounties in the war of 1812, but which has not been actually located for such purpose. The Commissioner of the General Land Office, inasmuch as these lands have long been so reserved, without being taken up, is of opinion there is no objection to an act granting the right prayed for, but suggests, as there are other cases similarly situated, it would be better to pass a general law, applicable to all such. A general bill is accordingly reported, and its passage recommended. The proviso to the first section was necessary to give the settler a right of preëmption on lands released from reservation under the act of 1841; and as the settlers on all reservations were similarly situated, it was thought best to make the principle applicable to all cases of lands released from reservation, so as to obviate injustice to settlers on such lands, or the necessity of passing special laws, as was done in the case of the Bastrop claim and others.

GENERAL LAND OFFICE,
January 28, 1852.

SIR: I have the honor to return, herewith, the petition of Edward Holt, praying authority to enter a certain tract of land upon which he has made improvements, and in reference to which you request to be informed whether there is any serious objection, legal or otherwise, to granting his request.

The tract in question, southwest quarter twenty-seven, township seventeen north, range three west, is a part of the land reserved by the President, under the act of May 6, 1812, for the satisfaction of military bounties therein provided for; and being so reserved, cannot be disposed of otherwise, under existing laws. There is no objection known to this office, to the passage of a law whereby Mr. Holt can enter said tract at the minimum price.

Mr. Holt's case was presented to this office by the Hon. Wm. K. Sebastian, and he advised, on the 31st ultimo, of the reasons why this office

could give Mr. Holt no relief; and subsequently, on the 9th instant, this office furnished him with a draught of a bill, designed to release from reservation all the unlocated tracts of this originally reserved military land, and to authorize its sale like other public land.

It is respectfully suggested, that to this bill an amendment be added, providing for existing settlers on said tracts, which would meet this case of Mr. Holt; another on the part of Francis McCann, brought to the notice of this office within a few days, by the Hon. S. Borland; and any others of a like character, should any exist.

A copy of the bill herein referred to is enclosed, together with an amendment for the purposes last mentioned.

With much respect, your obedient servant,

J. BUTTERFIELD, *Commissioner.*

To Hon. S. W. Downs,

Chairman Committee Private Land Claims, U. S. Senate.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1852.

Submitted, and ordered to be printed.

Mr. BORLAND made the following

REPORT:

[To accompany bill S. No. 214.]

The Committee on Public Lands, to whom was referred the petition of Mark and Richard H. Bean, report:

That, encouraged by the inducements held out by the laws of the United States for the settlement of the public lands, Mark and Richard H. Bean located themselves, in the year 1817, upon the Illinois river, near its junction with the Arkansas, where they discovered a salt-lick.

That, in 1819, they were urged by the solicitations of Major Bradford, of the United States army, then in command at Fort Smith, to engage in the manufacture of salt for the supply of the troops at that post, and were induced by the promises of that officer (that in case they would do so, their rights should be fully secured and protected by the Government) to procure the necessary apparatus and fixtures, and erect the proper buildings for making salt.

That this establishment was erected at considerable trouble and difficulty, and the expenditure of much money, by the petitioners, upon the faith of the promises held out to them by the officers of the Government, and the prospects of an increased demand for salt when the country should be thrown open to settlement by the white people.

That this was not done until the year 1826; and just as they were beginning to realize a remuneration for their labors, difficulties, and expenses, of eight years' duration, they were deprived of their property, and all prospect of advantage from that source, by the treaty made by the Government with the Cherokee Indians on the 6th May, 1828, by which the country, including their salt-works and all the land which had been settled, improved, and cultivated by them, was ceded to the Cherokee Indians.

This statement of facts is corroborated by the written statements of General Arbuckle and Colonels Bonneville and Miles, of the army, and by the duly-authenticated affidavits of thirteen entirely credible and highly respectable individuals. Five of these witnesses have valued the losses sustained by the petitioners, by the act of the Government, at \$15,000, and one of them at \$20,000; the first of which valuations is fully corroborated by the statements of Colonels Bonneville and Miles; the latter of whom states: "I deem this estimate just, and much more moderate than what I should have awarded, had I been called on to give a verdict in the case;"

and the former declares that the petitioners "could not have lost by the abandonment of their buildings, outhouses, furnaces, wells, warehouses, and a five-mile road to the falls, and a warehouse there, less than \$15,000; nor do I believe they would have sold out at any time their full claim to that place for double that amount."

The committee have referred to the treaty with the Cherokee Indians before mentioned, and find, by the third article thereof, that "the United States agree to have the lines of the above cession run without delay; and to remove, immediately after the running of the eastern line from the Arkansas river to the southwest corner of Missouri, all white persons from the west to the east of said line, and also all others, should there be any there, who may be unacceptable to the Cherokees, so that no obstacles arising out of the presence of a white population, or a population of any other sort, shall exist to annoy the Cherokees; and also to keep all such from the west of said line in future." It will be seen that, by this provision of the treaty, the United States destroyed all the real property of every description of the white people within that Territory—which Territory had been previously thrown open to settlement, improvement, and cultivation, and to which white settlers had been invited by the acts and policy of the government, and which of course sanctioned and legalized the rights of property which should thereafter accrue to such settlers within that Territory.

The committee find that the Government has acknowledged the obligation to indemnify these petitioners for their losses by the act of the 24th May, 1828, (vide Little and Brown's edition of the laws, vol. 4, pages 306-7,) entitled "An act to aid the State of Ohio in extending the Miami canal from Dayton to Lake Erie, and to grant a quantity of land to said State to aid in the construction of the canals authorized by law, and for making donations of land to certain persons in Arkansas Territory;" by which a donation of two quarter-sections of land was made "to each head of a family, widow, or single man over the age of twenty-one years, actually settled on that part of the Territory of Arkansas which, by the first article of the treaty between the United States and the Cherokee Indians west of the Mississippi, ratified the 23d day of May, 1828, has ceased to be a part of said Territory, who shall remove from such settlement according to the provisions of that treaty;" and which donation was declared to be made from the United States "*as an indemnity for the improvements and losses of such settlers under the aforesaid treaty.*" This donation of land, however, although fully acknowledging the obligation to indemnify all persons so situated, was intended only for settlers on small tracts of land, whose improvements were of small account, but fully acknowledges and sustains the justice of making to these petitioners an adequate compensation and indemnity for the losses which they have sustained by the acts of the Government.

One fact, here, should have much weight in support of the claim of the memorialists for remuneration for their losses: it is, that the improvements, fixtures, and implements, constituting alike their agricultural and their manufacturing interests, both of which had cost them a very large expenditure of labor and money, and which they were compelled to leave behind when they were removed under the treaty, were seized upon by the Cherokees, and have, from that time to this, been used by that tribe of Indians

in the manufacture of salt, which has been and is still necessary to supply the wants of that region of country. In this, it is seen that, by the act of the United States, not only were these memorialists driven from possessions which they had rightfully occupied under the sanction of government officers, and usefully to the public interests, and deprived of their valuable property, but those possessions, and that property, in effect, given by the government as a donation and a bounty to a tribe of Indians.

Although the foregoing presents the points upon which the committee believe the claim of the memorialists to be fairly set forth, justly founded, and clearly entitled to payment to the *minimum* amount proved to have been lost, yet it is deemed appropriate to present, as part of this report, some of the papers which have been offered in support of the memorial, that the proof may be at hand for reference to all who may desire to see it, and to present, more in detail than the mere abstract of the report can give, the several facts which make up that proof. These papers are : the memorial itself, marked A ; a statement in " further support of the memorial," by Mark and Richard H. Bean, and the affidavits of William Quesenbury and William McGarrah, marked B ; General Arbuckle's statement, marked C ; Lieutenant Colonel Bonneville's statement, marked D ; and Brevet Lieutenant Colonel Miles's statement, marked E.

And the committee recommend the passage of the accompanying bill.

A.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The petition of the undersigned, Mark Bean and Richard H. Bean, respectfully sheweth : That in the year 1817, they discovered a salt-lick on the Illinois river, near its junction with the Arkansas, in what was then the Missouri Territory ; that in 1819, the officer in command at Fort Smith, Major Bradford, in view of obtaining on reasonable terms a supply of salt for the use of the troops at that post, urged your petitioners to engage in the manufacture of salt at said lick, and promised that in case they would do so their rights should be fully protected and secured by the government ; that, induced by the solicitations and relying on the promises of Major Bradford, they proceeded to make the necessary improvements and established suitable works ; that, in consequence of the exclusion of white settlers from the tract known as the " Lovely Purchase," upon which the salt-works of your petitioners were located, the proceeds of their salt for many years afforded them a very inadequate remuneration for their trouble and expense, and they did not realize anything like a profit on their investment until after the country was thrown open to the whites by the government in 1826 ; that, just as they were beginning to reap the hard-earned reward of eight years of labor and expense, they were deprived of their property by the treaty made in May, 1828, with the Cherokee Indians, by which the Lovely Purchase was ceded to that tribe, and in which no reservation was made of their works ; that, although ample provision was made by Congress to indemnify the other settlers similarly dispossessed of their

improvements, your petitioners have never received any compensation or indemnity whatever for the heavy losses they sustained in consequence of the treaty of 1828, with the exception of a donation of 320 acres of land granted to one of them, Mark Bean, under the act passed to meet such cases, in consideration of, and as an equivalent for an improvement made by him at some distance from the salt-works. Your petitioners further represent, that, so far from there being any good reason for such discrimination in favor of others and against themselves, their claims, in point of fact, rested on higher grounds than those of any other persons dispossessed by the treaty of 1828:

1st. Because, while others were in the country on permission—their presence being barely tolerated by the Government—your petitioners went there at the request of the government, made through its properly-authorized representative; and, at times when all other white settlers were rigidly excluded, your petitioners were encouraged to remain.

2d. Because the Government actually derived benefit from their labors and improvements in the reduced price of salt for the use of the troops and of emigrant Indians—the saving thereby effected during the eight years they were engaged in its manufacture amounting, as your petitioners are prepared to show, to more than \$5,000.

3d. Because their rights had been acquired under circumstances of peculiar hardship, privation, and danger—their works being situated in the wilderness, at a point which, in 1819, and long afterwards, was 50 miles beyond the extreme frontier outpost in the southwest, on the battle-ground of two powerful tribes of hostile savages, where supplies of all kinds could only be procured with great trouble and at an enormous expense, and where they were constantly exposed to the inroads of Indians, and to consequent loss of life and property.

Your petitioners, satisfied that the government never in any case intends to deprive individuals of their just rights without compensation, much less when those rights are acquired, as in this instance, under its express sanction, confidently ask your honorable body to indemnify them for the loss of their works, and, in so doing, to consider—

1st. The vast and extraordinary expense incurred in putting and in keeping them in operation; and,

2d. The actual value of the works at the time of dispossession.

In regard to the cost of the works, your petitioners would briefly submit, that in the first instance it was necessary to transport on pack-horses for seventy-five miles, through a country infested with hostile Indians, a year's subsistence, and other necessary supplies, for themselves, their workmen, and their teams; that in order to obtain salt-water they were compelled to bore through solid rock more than twenty feet; that their kettles were brought, part of them, overland, through the Indian country, upwards of one hundred miles, and part of them, at vast expense, by keel-boats from Nashville, more than thirteen hundred miles; that the prices of labor and provisions, at all times high in newly-settled countries, were in this case increased by the proximity of different Indian tribes at war with each other, and occasionally with the whites; and, lastly, that throughout the whole period of their stay at the salt-works, they were subjected to constant and considerable losses from Indian depredations.

As to the value of their works, there were, up to the time of dispossession—

sion, no other salt-works in the country. Salt could not be obtained elsewhere, except by transporting it in keel-boats from the Kanawha river. The quantity made at the time referred to was at least thirty bushels per day, worth at the then lowest price \$1 per bushel. The cost of manufacturing was about 25 cents per bushel.

With these statements, and with the accompanying evidence, your petitioners submit their case, relying on the equity of Congress for such relief as shall to your honorable body seem just and proper.

MARK & R. H. BEAN.

B.

We, the undersigned, for the further support of our memorial, now in the hands of Congress, make the following statement :

1st. That, after mature consideration and strict investigation of our losses by the treaty between the United States and the Cherokees, (which losses are fully set forth in our memorial,) we state the amount to be not less than fifteen thousand dollars.

2d. That, in specifying the said sum of fifteen thousand dollars, we have not only made an estimate of our actual damages, in general terms, but we have minutely and particularly considered each article, or cause of damage and loss.

3d. That our present statement can be corroborated and sustained by persons of the highest standing and integrity in our State, some few of whose statements will be forwarded, accompanying this.

In conclusion, we leave our claim to the equity of Congress, believing that the amount stated above will be granted.

MARK BEAN,
R. H. BEAN.

STATE OF ARKANSAS, }
County of Washington, } ss:

This day appeared before me Mark and Richard H. Bean, and testified to the truth of the foregoing statement.

M. W. McCLELLAN, J. P.

FEBRUARY, 1850.

I, the undersigned, make the following statement of facts concerning the losses sustained by Messrs. Mark and Richard H. Bean in complying with the treaty of 1828 between the United States Government and the Cherokee Indians :

I was an eye-witness to the depredations of the Osage Indians, to the heavy outlay of funds necessary to keep the salt-works of the said Messrs. Bean in operation, and to the actual abandonment of all their improvements—water, kettles, furnace, and all the utensils and implements used in salt manufacture. I consider, believe, and now state, that the losses the said Mark and Richard H. Bean sustained by the abandonment of said salt-works, in compliance with the United States Government, could not

have amounted to less than fifteen thousand dollars ; and that, were all things connected with their salt-works taken into consideration, the amount would be swelled to a much higher sum. I further add—having seen the memorial presented to Congress by said Mark and Richard H. Bean—that the facts therein set forth are, to my knowledge, true ; and that, in compensating them for losses referred to in that memorial, the amount could not, in justice, be made at less than the said sum of fifteen thousand dollars.

WILLIAM QUESENBURY.

STATE OF ARKANSAS, }
County of Washington, } ss:

This day, before me, an acting and duly commissioned justice of the peace for said State and county, appeared William Quesenbury, to me well known, and on oath testifies that the foregoing statement is true.

M. W. McCLELLAN, J. P.

FAYETTEVILLE, ARKANSAS,
February 21, 1850.

The undersigned, being called upon by Mark and Richard H. Bean for a statement in relation to their loss occasioned by their necessary abandonment of their *salt-lick*, in what was called the "Lovely Purchase," in compliance with the treaty of 1828, made between the United States and the Cherokees, states : That I was a citizen of said "Lovely Purchase," at the time of said treaty, and a neighbor, and well acquainted with the said Beans, their business, &c., and can say that, at the time of said treaty, they were successfully engaged in making salt in said "Purchase"—making from thirty-five to forty bushels per day—and that salt at the time was worth one dollar per bushel in their salt-house ; and that, to comply with the requisitions of said treaty, they were compelled and did abandon and remove from the said ceded territory, leaving all their salt-manufacturing utensils, together with the extensive improvements made by them in establishing and for the carrying on of said works. From a knowledge of the facts, and to my best opinion and belief, their damage by said abandonment, in compliance with said treaty, was not less than twelve or fifteen thousand dollars.

WILLIAM MCGARRAH.

Sworn to and subscribed before me, the day and date above written.

J. W. CHEW, J. P.

STATE OF ARKANSAS, }
County of Washington, } ss:

I hereby certify that M. W. McClellan and John W. Chew, esquires, before whom the above and foregoing proof of Mark and R. H. Bean, William Quesenbury, and William McGarrah, was taken, were, at the time of taking said proof, justices of the peace in and for the county and State

aforesaid, duly commissioned and sworn, and that their signatures, as appear thereto, are genuine.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, as clerk of the circuit court of said county, this the [L. S.] 21st day of February, 1850.

P. R. SMITH, *Clerk.*

C.

HEADQUARTERS SEVENTH MILITARY DEPARTMENT,
Fort Smith, November 3, 1849.

GENTLEMEN: In accordance with your request, I can state, that, when I arrived in this country, in the spring of 1822 or 1823, you were making salt on the Illinois, about forty-five miles from this place, on the road that was travelled for some time from Fort Smith to Fort Gibson, after the latter post was established. On my arrival here, I understood from Major Bradford, the commanding officer, that you had been permitted to establish your salt-works at that point, as there was then a great scarcity of salt on this frontier: and it is known to me that you were permitted and did continue your operations at that saline, until the country was ceded to the Cherokees, when you were compelled to remove therefrom. The country between this and the point designated, and west of it, was then occupied by Indians; and during the time you were carrying on the manufacture of salt, I heard that many of your horses, cattle, hogs, &c., were stolen or destroyed, and that these and other depredations were principally committed by the Osages. Whether you have received any remuneration for the losses you sustained, I am not advised.

I am, gentlemen, very respectfully, your obedient servant,

M. ARBUCKLE,

Brigadier General United States Army.

Messrs. MARK and RICHARD BEAN,
Washington County, Arkansas.

D.

SACKETT'S HARBOR,
January 28, 1850.

DEAR SIR: In consequence of the application of Mark and Richard Bean to forward to you a statement of their losses, &c., in the Indian country, I did so in general terms, stating to you the difficulties and losses they must have sustained, being on the war-ground of two different nations of hostile Indians. Learning that it was not so much losses of that character they met with, as it was the specific losses incident to the treaty ceding the Lovely Purchase to the Indians in 1828, I therefore make the following statement, in addition to the one already forwarded to you: I went to Fort Smith in March, 1822; the Beans, at that time, were located about fifty miles west of Fort Smith, on the Illinois river, about five miles from the present Webber's Falls of the Arkansas; here they had an ex-

tensive establishment, called Bean's Salt-licks, in full operation, supplying with salt the whole of that country. There were no other salt-works within several hundred miles of it; and I believe the only salt coming in competition with them was that from the Kanawha salt-works. I looked upon their establishment as a good fortune for themselves; and having now passed all the difficulties with the Indians, with their buildings, and the establishment of their works, they had only to wait for the filling up of the country by emigration to be the owners of the finest property in that country. That part of the country was filling up rapidly when it was transferred to the Indians—when the Beans and all the settlers of the Lovely Purchase were turned out, to make room for the Cherokee Indians, in 1828. I suppose they could not have lost (by the abandonment of their buildings, outhouses, furnaces, wells, warehouses, and a five-mile road to the falls, and a warehouse there) less than fifteen thousand dollars; nor do I believe they would have sold out, at any time, their full claim to that place, for double the amount. I would also state, that I was very well acquainted with these gentlemen; that I have visited their establishment frequently; and they were looked upon as the first of the land, and their removal from that country was almost destruction to them.

Sir, I am, very respectfully, yours,

B. L. E. BONNEVILLE,

Lieutenant Colonel 4th Infantry.

Hon. SOLON BORLAND,

United States Senate, Washington.

E.

FORT WASHITA, *March 1, 1850.*

MY DEAR SIR: I received, a few days since, a communication from Messrs. Mark and Richard Bean, of Washington county, Arkansas, appealing to me, as one among the very few living, having a knowledge of their improvements and salt-works in the old Lovely Purchase, (now Cherokee nation,) as to their estimated value—putting, themselves, a value of fifteen thousand dollars for improvements, location, loss of kettles, &c., &c. I deem this estimate just, and much more moderate than what I should have awarded, had I been called on to give a verdict in the case. As far as I can recollect, after the lapse of twenty-five years, Messrs. Bean's improvements consisted of a good double log-house, kitchen, negro quarters and stables, two drying-houses, and a large salt-house for deposit, with sheds over two rows of kettles, at two springs. The number of kettles I cannot remember, but judge there must have been about sixty at one spring, and from thirty to forty at the other. These kettles were brought into the country before steam navigation was deemed practicable on the Arkansas, and were transported at great expense over six hundred miles in keel-boats.

I am, sir, with very great respect, truly, your obedient servant,

D. S. MILES,

Brevet Lieutenant Colonel 5th Infantry.

Hon. SOLON BORLAND,

United States Senate, Washington city, D. C.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1852.

Ordered to be printed.

Mr. ATCHISON made the following

REPORT:

[To accompany joint resolution S. No. 19.]

The Committee on Indian Affairs, to whom was referred the memorial of Johnson K. Rogers, legal representative of the widow and heirs of David Corderoy, deceased, report:

That, by the treaty of 1817, David Corderoy, as the head of an Indian family, was entitled to a "life estate" in a reservation of 640 acres, with reversion to his widow and children. That treaty ceded to the United States a portion of the country of the Cherokees east of the Mississippi, for a like quantity, "acre for acre," west of that river, in the then Territory of Arkansas. It allowed such reservation to each head of an Indian family, who resided upon territory then or thereafter to be ceded to the United States, who might wish to become a citizen of the United States, and provided that the register of the names of such reservees should be filed in the office of the Cherokee agent. By the treaty of 1819, a further tract of country was ceded, and the same provision as to reservations extended to those heads of families who resided *within the ceded territory*, those enrolled for emigration to Arkansas excepted. David Corderoy registered his name with the agent for a reservation under the treaty of 1817, but was not embraced within the territory ceded in 1819. By the 13th article of the treaty of 1835, which finally ceded the remaining territory of the Cherokees, reservations were to be allowed to all such heads of families as were entitled under the treaty of 1817, and who had complied with the stipulations of said treaty, notwithstanding such reservations were not included within the lands ceded by the treaty of 1819. The right of Corderoy under the treaty of 1817, destroyed by that of 1819, was thus revived and provided for by the final treaty of 1835. A supplemental article of the last named treaty, adopted in 1836, extinguished all reservations, and substituted a compensation in lieu of them. The proof is clear that Corderoy was a Cherokee, with a white woman as his wife; that he resided upon his reservation until forcibly dispossessed by the State of Georgia, in 1833 or 1834, and, soon after the treaty, died, leaving a widow and children. A commission was authorized by the treaty to adjudicate all claims under the treaty, and their decision was to be final. Several commissions sat, in the investigation of these and other claims. They successively rejected the claim of Corderoy: and to obtain relief from their decisions, his memorial is presented.

The sole ground upon which his claim was rejected was that stated by the first board—that the register conclusively showed that he was not the “head of an Indian family,” within the meaning of the treaty. The “register” kept by the agent, under the provisions of the treaty of 1817, was before the commissioners. In form, it was a registration of the names of reservees, with a column opposite, in which the number in family was indicated in figures. The figure “1” stood opposite the name of Corderoy, and the commissioners held that “one” could not constitute a family. In this conclusion, upon these premises, the committee do not concur. How little the *register* was considered conclusive is shown by the fact that opposite many of the names was a blank, yet the claims were allowed upon parol proof of the number of the family. The legal effect of a registration under this treaty has become a subject of judicial decision, and received a consideration wholly different from that accorded by the boards of commissioners. In *Jones, lessee, vs. Evans et al.*, 5th Yerg. 326, the supreme court of Tennessee say, “that the fact that a party’s name was registered with the Cherokee agent for a reservation within the time prescribed by law in the treaties is *conclusive evidence* that such party was the ‘head of an Indian family,’ and resided within the ceded territory.” This decision was mentioned with approbation by the Supreme Court of the United States, 2d How., 591. In *Blair and Johnson vs. Pathkiller’s lessee*, 5th Yerg., 331, a *registration* is deemed an expression of a desire to become a citizen of the United States, and entitles the party to a reservation. The ground of these decisions is, that the registration is the act, not of the Indian, but of an accredited public officer, the agent of the United States, and charged with the duty, which the law presumes he discharges correctly. His duties were judicial, and involved the ascertainment of facts, and the making of a written memorial of them. His registry was conclusive, because the highest official evidence. Nor was there, under the treaty of 1817, a necessity for guarding against frauds: the quantity of such lands was reserved from the amount ceded west of the Mississippi, and that was sufficient protection.

The committee, therefore, are of opinion that David Corderoy was entitled to a reservation under the treaties of 1817 and 1835, and as he was dispossessed by Georgia, is entitled, under the 13th article of the treaty, to compensation for such reservation, as “unimproved land;” but, inasmuch as the proof of value which has been furnished the committee is based upon the present improved value thereof, the committee report the accompanying resolution, directing the proper officers of the treasury to ascertain and pay the value of said reservation at the date of the treaty, as unimproved land.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1852.

Submitted and ordered to be printed.

Mr. HAMLIN made the following

REPORT:

[To accompany bill S. No. 220.]

The Committee on Commerce, to whom was referred the petition of Noah Miller, ask leave to submit the following report:

The petition referred is in the words and figures following, viz:

To the honorable the Senate and House of Representatives in Congress assembled, A. D. 1837:

Your petitioner, Noah Miller, of Linconville, in the State of Maine, respectfully represents:

That in the month of November, 1814, while the British troops were in possession of Castine, I, the said Noah Miller, hired a large whale boat, at Lincolaville, and four men, on wages, to intercept, in the bay, supplies that were expected to arrive at Castine, for the British troops, from Halifax. I procured the necessary arms and fitted out the boat, and made all proper arrangements for such an enterprise. I fortunately espied, near Turtle Head, in Penobscot bay, about five or six miles from Castine, a British vessel, for the capture of which I immediately made preparation. The vessel showed a number of men on deck. My force was four men besides myself. On approaching the vessel, I was mistaken for a pilot boat from Castine, sent out to pilot them in. The enemy was not undeceived till I had stationed my men at the proper positions on her deck, and approached to demand the helm, and informed the captain that he and his crew were my prisoners, and that his vessel was my prize. The vessel proved to be the schooner Mary, from Halifax, laden with bales of merchandise and a large amount of clothing for the British troops at Castine. As soon as the prisoners were disposed of for our safety, I put about and made all sail for Camden, a distance of twenty miles. These movements were espied from the heights near Castine, and immediate pursuit was made by the British, who pressed into their service an American pilot, who, by accident or design, ran the vessel aground, by which they were detained three hours, and enabled me to reach Camden with my prize. When all were secured, so that I could leave the helm, and on our way to Camden, I went into the cabin, where was a lady in the greatest distress of mind, arising from apprehension of

being massacred or of great ill usage, (for she had been told that the Americans were no better than savages.) She was the wife of the captain, and had retired to her berth in despair. I relieved her apprehensions with assurances of honorable protection. The captain had his furniture and goods on board, and was going to take up his residence at Castine, and engage in trade there. On arriving at Camden, I procured a boarding-house for the captain and his lady, engaging the kindest attention to them, at my own expense, while they should remain, and gave up to them all their furniture, goods, and effects, of every description, as I thought was becoming the American character to do.

Soon after the capture, and on our way to Camden, the supercargo of the Mary, Mr. McWalters, offered me £10,000 as a ransom for the schooner and cargo. I rejected the proposition. It would hardly have comported with the dictates of patriotism to have suffered the enemy to receive the "aid and comfort" of such a cargo of supplies, to enable them to maintain their position at Castine, and to annoy our commerce and our citizens at that commanding point. I declined the proposition while the enemy were under a press of sail to overtake us. There were on board the schooner Mary letters from sundry merchants and others in England, to the Governor at Halifax, and by him transmitted to the British commander at Castine, which contained intelligence interesting to our Government.

Apprehending great insecurity in the captured goods remaining at Camden, exposed as it was, I chartered a great number of wagons, and had them all conveyed the same night to Warren, Waldoborough, and afterwards to Portland, except what belonged to the crew and passengers on board the schooner, which I gave up to them. The next day the *Furieuse* 74, Commodore Muncy, appeared off Camden, and demanded the restoration of the British schooner and cargo. Commodore Muncy sent in a special message, conveying the threat, that unless I gave up the vessel, &c., he would have me at all events, and hang me up to the yard-arm; and by the same message, a public offer was made of a reward of \$10,000 for my arrest and delivery on board the *Furieuse*, accompanied by threats to destroy the town. Under such influences, some of the citizens of Camden held a meeting, as I was informed, at which it was determined to arrest me, and deliver me up to Commodore Muncy. I made it hazardous, if not impracticable, to carry that resolution into effect. I immediately received from General King orders for calling out the militia in the neighboring towns, for the defence of Camden. I was then a major in the militia. I communicated the orders, the troops were raised, and I appeared personally among those who had resolved at a public meeting to arrest me, and deliver me to the British commodore, and was ready to render such services as I might be able, to defend them against the threatened attack of the common enemy. Josiah Hook, esq., was then the collector of the district of Castine. He appeared at Camden, and took great interest in the captured vessel and cargo. He advised me by all means to give both up to the Government, on whose account, as collector, he would take possession, and proceed against them as a seizure; telling me that was the only way to protect Camden and the country around; and that, as a private citizen, I had no right to make the capture. Others told me I had no right to the property captured; and though some expressed a different opinion, yet I yielded to the collector's views and solicitations, under a misapprehension, as I have recently been led to believe, of my legal and just rights. And I have no doubt, from

subsequent events, that many if not most of those who counselled me to give up the prize to the Government, and to the management of its revenue officer, were stimulated to give me such counsel by the collector himself; but I gave it up, notwithstanding all the hazard I had run to capture, and the trouble I had been at to secure it. But for this great error, committed under misapprehension of my rights, produced, as I have reason to believe, by the revenue officers of the Government, I should not now have occasion from pecuniary necessity to present this petition to your honorable body; *thirty-three thousand eight hundred dollars* having been received into the treasury of the United States as a moiety of the net proceeds of the vessel and cargo, after condemnation and sale, which afterwards took place. While Commodore Muncy was off Camden, Mr. Hook procured Joseph Farley, esq., collector of the adjoining district of Waldoborough, to go on board of the *Furieuse* with the municipal authorities of Camden, and represent the facts of the case; and he did so. They informed Commodore Muncy that the capture was the private act of myself as an individual, unconnected with the Government, and unauthorized by it; that neither the collector of Castine, nor any other officer of the Government, had any thing to do with it, nor had any interest in nor any control over the matter. They further represented, that I had carried all the goods away, and secreted them, and therefore they could not restore them. This information, accompanied by suitable intercession in behalf of themselves and the people of Camden, had the effect to assuage the commodore's wrath against *them*, although it exposed *me* still more to the halter which dangled to the yard-arm of the *Furieuse*. The Government's officers having made sure of the prize, the humble individual who had hazarded something in taking it, and had done the country "*some service*," was left to escape arrest by his own fellow-citizens, acting under the temporary lure of \$10,000 reward, and to keep his neck out of the commodore's noose the best way he could. I was subsequently appointed an officer of the customs at Belfast, and in that capacity I made seizure of a large quantity of beef, belonging to one Whittier, of Belfast, on its way to Castine, to afford "*aid and comfort*" to the enemy. It was condemned and sold. Whittier swore vengeance against me, in which he had the countenance and support of a number of the citizens who were driving a profitable trade with the British, to which I had, as an officer of the customs, often presented *serious obstacles*. Whittier attacked me in the streets of Belfast with a knife, by which I was severely and dangerously wounded; the effects of which were disastrous to all my future hopes and prospects through life. I was rendered a helpless cripple, my nervous system was shattered, and I have been wholly unable to attend to any sort of business whatever, from that time to this, for the support of myself and my family. My condition is that of poverty and of helplessness, except from the justice of my country, whose coffers were replenished in its time of need at the expense of my own.

I therefore most respectfully, and, in my situation, must say *humbly*, pray that the proceeds of said schooner *Mary* and cargo may be restored to me, or such other measure of justice meted out to me as you in your wisdom may deem suitable and proper, under the circumstances of the case.

NOAH MILLER.

STATE OF MAINE, *Waldo, ss*:

Then personally appeared the above-named Noah Miller, and made oath that the facts detailed in the foregoing petition, by him signed, relating to

the capture by him, as a private individual, and the subsequent disposition, of the British schooner *Mary* and her cargo, in the late war, are true. Before me,

JOSEPH MILLER,
Justice of the Peace.

NOVEMBER 20, 1837.

The occurrences related in the foregoing memorial must necessarily have been of general notoriety. *Material errors* in a statement of them could hardly have escaped detection, and are not therefore *to be presumed*.

The principal and most material facts stated, seem sufficiently established by circumstances, and by extrinsic proofs. Thus sustained in prominent points, the inference is natural and fair, that the whole relation is true. It will be perceived, too, that the statement is verified by the oath of the memorialist. This cannot fail to strengthen the presumption of its correctness. Noah Miller possessed, in a high degree, the respect and confidence of the community with which he was conversant. It is not lightly to be presumed that *such* a man, especially when under the solemn influences of an oath, even although he should indulge the belief that such perversion might strengthen the application he has submitted, would *intentionally* pervert the truth. A man so eminently distinguished by intrepid bravery, and by elevated love of country, is seldom found to unite in his character the opposite and degrading quality of sordid and mercenary selfishness. And it would accord still less with all reasonable probabilities, to suppose so of one who, when pressed by danger, not merely of loss of property, but of *life* even, could yet find, in the impulses of his own integrity and fidelity to his country, motives strong enough to impel him to reject the proffer made to him by the supercargo of the vessel he had so gallantly captured, of *ten thousand pounds*, (£10,000,) if he would suffer his prize to proceed to her destined port, there to strengthen the hands of the public enemy. Influenced by such considerations, and after a careful review of the proofs exhibited, your committee are constrained to believe that the facts alluded to are fairly and truly set out by the memorialist.

They are next led to inquire whether it accord with the past usages of the government, to grant the prayer of the petition?—whether justice to the individual applying, require it?—whether a policy just and wise, with reference to its continued and prospective influences upon the national interests and character, demand it?

In regard to the first-mentioned topic, your committee ask leave to say, that, from the earliest periods of our history, it is believed that the policy has always obtained, of assigning to captors an adequate portion of the avails of all prizes made upon the ocean, *flagrante bello*. By the act of April 23, 1800, “for the better government of the navy of the United States,” (3d vol. U. S. Laws, p. 360, sec. 5,) it is provided, “That the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors; and when of inferior force, shall be divided equally between the United States and the officers and men making the capture.” Similar provisions are found in the act of June 28, 1798, (vol. 3, U. S. Laws, pp. 71, 72.) The *principle*, it is believed, has always obtained. It is true that these provisions are made with reference to the *navy of the United States*, or the

public armed vessels of the nation. But the *reason* upon which that policy is founded, is still *more* manifestly apparent in the case of captures thus made by the unaided means, skill, enterprise, and courage of *individual* citizens. The United States, in this class of cases, furnishing *no portion of the force*, incurring *no part of the risk*, and being in no wise the meritorious cause of the capture, can, *in justice*, claim *no part of the proceeds*. Nor is this rule, thus modified, without the sanction of Congress. An express recognition of it may be found in the acts of June 25, 1798, (3d vol. U. S. Laws, p. 69, sec. 2,) and of 26th June, 1812, (4th vol. U. S. Laws, p. 450, sec. 4,) and in the acts of March 3, 1813, (4th vol. U. S. Laws, p. 518,) of August 2, 1813, (vol. 4, Laws U. S., pp. 625 and 656;) and in other acts, the principle is carried so far as to require the payment to individual citizens of a *bounty* for the *destruction* of vessels of the enemy, and a bounty for *prisoners taken, out of the public treasury*. No doubt, then, it is believed, will be entertained, but that it accords with the ordinary jurisprudence of the country and with the whole course of its legislation, to concede to the captors, in such a case as this, the *entire* proceeds of the prize. But it may be objected, that *this case* has been actually *adjudicated* upon, and the proceeds of the capture *disposed* of according to the provisions of the revenue laws—the one moiety having been paid, some thirty years ago, into the treasury of the United States, and the other moiety distributed between the collector (Mr. Hook) and those who assisted at the capture, and perhaps to others. Such an objection, so far as relates to such *individuals* as may have received distributary shares of the proceeds of the capture, your committee think is entitled to much consideration.

It would be of dangerous consequence if Congress were to attempt to disturb that distribution, so long ago made—made, probably, under the sanction of the Government for the time being. And even if it were of less injurious or of less doubtful policy, it would not probably be deemed *competent* for Congress thus to interfere. Fortunately, perhaps, for the memorialist, even on *this point* there are “precedents on file.” The case presented to Congress in 1814, and which resulted in “An act for the relief of David Porter, and his officers and crews,” was in some respects analogous to this. (See vol. 4, Laws U. S., p. 683.) Decrees of condemnation had been rendered in like manner; but, by the law referred to, *that portion only* of the proceeds of the captures made, *which had accrued to the United States*, was directed to be relinquished and paid over to the captors. So in the case of the captures made near the island of Barrataria, in September, 1814, by Colonel George F. Ross and Captain Daniel Patterson; “*so much* of the net proceeds of the forfeiture and penalties, not exceeding \$50,000, as *accrued to the United States*, by the decree of condemnation rendered *for a violation of the laws of the United States*,” was directed to be paid over to the captors—(see vol. 6, Laws U. S., pp. 118, 171)—leaving, in both cases, such distribution as may have been made to *individuals*, under color of the revenue laws, *undisturbed*; thus furnishing precedents strongly enforcing the general principle, and at the same time illustrating the exception. Assuming, then, that the principal facts in this case are sufficiently established, and that, with the limitations herein above explained, it accords with past usages of the Government in similar cases to grant the relief prayed for, it remains next to consider how far *justice* to the memorialist requires it. To arrive at a proper conclusion on this point, it is very necessary to have regard to the condition of the country at the time and place where the transactions alluded to occurred. It is not the desire of your committee, nor would

it be appropriate, to crowd into this report any unnecessary matter of historical detail; but it may not be improper to call to the recollection of the Senate, that at the period alluded to Castine was in the possession of the enemy; his vessels of war were hovering over the coasts, and in great force commanding the bay. What his ulterior intentions may have been, is left, perhaps, in some sort, to conjecture; but, cut off as he was from direct intercourse with the interior, it was of the utmost importance to intercept also his supplies, and to diminish his resources, in their progress up the bay. Fully and completely to accomplish that end, a superior naval force was undoubtedly requisite. But *such* a naval force the Government had not then, at that point, in its control. In *such* circumstances, what resource remained but that which was to be sought for in the adventurous enterprise, the active vigilance, the hardy courage, and the ardent and devoted patriotism, of its unsupported individual citizens? There was no other. And happily for the country, and for the honor of its people, that resource, in *such an exigency*, did not fail! Many there doubtless were, who, on that memorable occasion, were distinguished by their devotion to their country, and by their brave and gallant bearing; but among them, none seemed more conspicuous than Noah Miller. Alfred Johnson (whose affidavit is appended to this report, testifies of him, that "Major Miller was a very active officer of the militia, and signalized himself as an efficient partisan, and a vigilant observer of the movements of the enemy in our vicinity; and it is my opinion, that no one person in this quarter was oftener mentioned as a brave and useful friend of his country during that war. About one year, according to my best recollection, he was in the actual service of the United States as a captain of volunteers; and, after the expiration of this service, it was understood—and I have no reason to doubt it—that he was in the revenue department of the Government—in what capacity, or whether officially or as a volunteer, I cannot say—and assisted to prevent an illicit intercourse with the enemy. He received a wound in a personal rencounter, growing out of his said employment. During the war he made a capture of a valuable vessel and cargo, attempting to introduce goods of the enemy into this country; and, in doing this, it was at the time the general opinion that the said capture was made by him as a private citizen, at his own risk, responsibility, and expense."

William P. Preble, esq., who, as district attorney of the United States, conducted the prosecution which resulted in the condemnation of the captured vessel, and whose deposition is also hereto appended, thus testifies of the memorialist: "I well remember said Miller was in those days distinguished for his zeal and activity (*after I knew him*) in carrying on a partisan warfare against the enemy and the contraband trade carried on with them in that quarter, while the British forces were in possession of Castine." And in respect to the capture he made, he says: "I further depose and say, that it was well understood and notorious that said Mary and cargo *were in fact captured* and seized by Major Noah Miller, who, having discovered the vessel from the shore, put off in a boat with a small crew, and took possession of her, and brought her into Camden; and that the capture was *wholly* due to the activity and enterprise of said Miller and his assistants. I further depose, that I well remember it was understood at that time that said Miller met with a good deal of difficulty in securing the property after its capture, and that it was wholly owing to his active exertions, aided by his boatmen, that the property was removed to a place of safety; and that, if it had not been so removed, it would have been rescued by the enemy's armed forces

then in the vicinity. I have since understood, and now fully believe, that said Miller, in making said capture, and securing said property, *acted solely from his own promptings*, and in no respect under the authority and instructions of Mr. Hook, the collector."

Mr. Preble, in a subsequent communication, again says: "The act of the capture was an act of Miller's own devising and enterprise, unprompted by any one, and unaided by any one except his boat's crew. Miller continued afterwards in the United States service as inspector, and until our troubles of that period ceased, and was very active, vigilant, and enterprising, and *no man did better service* than he. He was the *terror* of smugglers and traders with the enemy. More than once he barely escaped with his life; so that it became necessary to caution him to be less venturesome and daring."

These extracts are made for the purpose of vindicating the character of the memorialist, and the nature of the important services he rendered.

A more minute examination of the proofs will sufficiently demonstrate, that in respect to the particular transaction upon which his application is founded, the conception of the plan, and the enterprise itself, *were all his own*; the risk and the danger of its execution were emphatically his; and he alone was originally responsible for the *entire expense*. With what skill, and perseverance, and gallantry, the enterprise was accomplished, also appears. If, by such exploits, the public enemy were more straitened in their quarters—if they were harassed by repeated alarms—if their supplies were cut off, or their resources diminished—these and all other *military* advantages resulting from them belonged to the country, and the country has received them. But it is not perceived on what principle of natural justice this memorialist should be deprived of the pecuniary fruits of his own, his individual and voluntary enterprise—an enterprise conceived in boldness, and executed with consummate address, and at great peril of life. "The laborer," it is said, "is worthy of his hire." And this government, whose strength consists in the affections of the people, and in the confidence which *they* have in its liberal justice, should be the last to render itself justly obnoxious to the imputation of "reaping where it has not sown, and gathering where it has in no wise sowed."

It is not only just, then, your committee venture respectfully to say, that whatsoever has accrued to the national treasury solely by reason of the individual efforts, skill, and gallant conduct of the memorialist, should be returned to him, but wise, also, and in accordance with the dictates of the soundest policy. Incentives to patriotism and to virtue cannot be too much multiplied; nor is anything unimportant which may in future affect the character or moral sentiment of the nation. What lustre has been reflected upon the national character by those individual acts of intrepidity, so bold in design, so skilful and so perilous in their execution, which, when the pressure of war was upon us, have sometimes illustrated the career of those in private life, as well as adorned the characters of those in the public employ! It is fit that they should be brought out in bold relief, and inscribed on the public archives! And who that values inflexible patriotism and incorruptible integrity, looking forward to the future, would desire to see that page torn from our history, which records that honors were awarded, and pecuniary rewards were given, to such men as Paulding, Williams, and Van Wert? In short, it seems to result that justice, the past practices of the government, and a wise and sound policy, all tend to sustain the principle upon which the application of the memorialist is based.

But there are yet difficulties which embarrass greatly the further progress of the committee towards a just and satisfactory conclusion.

No doubt, it is believed, can exist, but that the enterprise which resulted in the capture of the *Mary*, and of the clothing and supplies for the British troops at Castine, and the other articles of British merchandise on board, originated *exclusively* with the memorialist. No doubt is entertained but that he alone hired the small boat which was employed in the capture; and that he alone, and on his *own account*, hired, on *stipulated wages*, the men employed in the operation. It was *he* who became *insurer* against the risk, and he alone who became personally responsible for the payment of the men, and the hire of the boat; and *that* responsibility, it is presumed, he faithfully discharged. It is very plainly inferable, also, from the exhibits, that in addition to their stipulated wages, the men so employed by the memorialist, and a Major Ulmer, (of whom respectful mention is made in the exhibits, and who was taken on board of the prize after her capture, in order that she might be more safely and more certainly conducted into Camden,) received, out of the proceeds of the capture, a thousand dollars or more, each, as *their* proportion, respectively, of the proceeds which were distributed. But it is urged, in behalf of those men, if it should be the opinion of Congress that the memorialist receive any part of that moiety which was paid into the national treasury, that *then they* ought, respectively, to receive some suitable proportion of it also. When expeditions of this sort have heretofore, in time of war, been undertaken and fitted out *solely* by individual and private means, and such expeditions have resulted in making prize of the vessels of the enemy, it is believed to have been the policy of the law to leave the distribution of the proceeds of the prize to be determined by *such contract* or agreement as may have been made by the undertaker with the men he employs. But if *no contract* exist between them in this regard, then it is supposed to have been the policy of the law to require that those proceeds should be distributed according to the rule of proportion adopted in the naval service of the United States. In *this* case your committee are not satisfied that *any* claim is justly and fairly made out, except that of the memorialist; and yet, in the view of the supposed rule of policy alluded to, they are not prepared to say that none can exist. And they do not desire, by anticipation, and by a proposed disposition of the whole fund, to preclude it.

The present application seems to have been before Congress for many years. And in the one or the other House, several reports, all of them in favor of the claim, are said to have been made upon it. But so far as your committee are advised, no final action has, in either House, been had upon it. In February, 1838, the subject was very elaborately discussed, in a report made by the Committee on Commerce of the Senate, and the justice of the claim very strongly urged. During the last session of the Senate the memorial was again referred to the same committee, and that committee adopted, *in extenso*, the report alluded to of 1838, and introduced a bill in accordance with it; but that bill was not finally acted upon.

And now a rumor exists, (of the truth of which, however, your committee have no knowledge,) that the memorialist is dead. But if the fact be so, it can hardly be considered as requiring any other change in the action of the Senate upon it, except that of so shaping its legislation as that the legal representatives of the memorialist may be enabled to receive whatsoever sum shall be appropriated. The *justice* of the claim will be the same, the

policy of allowing it the same, and the moral and political right of the government to retain the money it has so received can be in no wise strengthened by that event.

The bill reported to the Senate in 1838, and recommended to its favor by its committee, purported to award to the memorialist ten thousand dollars, that sum being less than one-third of that part of the net proceeds of the capture which went into the national treasury. The Committee on Commerce, to which the memorial was referred during the last session of the Senate, recommended the appropriation of the same sum.

And although it may not comport fully with the grounds assumed by your committee, and the reasoning which they have endeavored, in this report, to enforce, to limit the proposed appropriation to so small a part of the money which has been paid over to the government in consequence of the capture, yet, in view of the difficulties hereinbefore adverted to, and not uninfluenced in this regard by the concurring opinions heretofore expressed by the committees to which the subject had been at different times referred, they have deemed it expedient again to recommend the appropriation of the same sum.

In conformity with this determination, they accordingly herewith present a bill, and respectfully recommend it to the favorable consideration of the Senate.

No. 1.

I, David Alden, of Northport, in the State of Maine, do testify and say : That, some time in the month of November, in the year 1814, I was on the shore of Penobscot bay, in said town of Northport, about twelve miles from Castine. I saw a boat board a sloop in the bay. Directly after they stood in for the land where I then was, and when they had got near the shore, the boat came on shore, and I found the commander of the boat to be Major Noah Miller, of Northport, and he had two Englishmen with him. One of them said he was the supercargo of the sloop; and he called me one side, and offered me one thousand dollars if I would persuade Major Miller to ransom the sloop; but I advised Major Miller not to ransom the sloop. The sloop went down the bay off against Lincolnville, and there stopped. Major Miller, myself, and the supercargo of the sloop, went down to Lincolnville by land, and the sloop was waiting there. While we were there we fell in with two gentlemen, Major Philip Ulmer and John Wilson. I heard the supercargo, who said his name was McWaters, offer Ulmer and Wilson each one thousand dollars if they would advise Major Miller to give up the sloop. Soon after this, Major Miller and the supercargo went on board the sloop, and proceeded for Camden. I understood said sloop was the English sloop Mary.

DAVID ALDEN.

STATE OF MAINE, *Waldo*, ss :

Personally appeared the above named David Alden, and made oath that the foregoing deposition, by him subscribed, is true. Before me,

JOSEPH MILLER,

Justice of the Peace.

NOVEMBER 23, 1837.

STATE OF MAINE, *Waldo, ss :*

I, Nathaniel M. Lowney, clerk of the judicial courts for the county of Waldo, certify that Joseph Miller is a magistrate in and for said county, and that the foregoing signature, purporting to be his, is genuine. I further certify, that the within-named David Alden is well known to me ; that he is a man of truth, and that his declarations on oath are entitled to credit.

In testimony whereof, I have hereunto affixed the seal of the supreme [L. s.] judicial court of said State, and subscribed my name, this 24th day of November, A. D. 1837.

N. M. LOWNEY,
Clerk of the courts for said county.

No. 2.

I, Charles Thomas, of Lincolnville, State of Maine, testify and say : That, some time in the month of October, in the year 1814, Major Noah Miller, of Northport, came to me, and wished to hire a boat which I owned, for the purpose of cruising in Penobscot bay, in order to intercept and capture such English vessels as might be bound to Castine with supplies for the British troops which were then in possession of Castine. I declined hiring my boat to him unless I could go with the boat. Major Miller said he wanted to hire men to go with him, and he would hire me. Major Miller said he would give me two dollars per day for my services, and one dollar per day for the use of the boat. I agreed to go with him for that sum. I accordingly took my boat and went a cruising with Major Miller a number of days in Belfast and Penobscot bays. Not falling in with any English vessels, after cruising a number of days, I returned home to Lincolnville, and left my boat in the charge of Major Miller, who was the captain of our crew. In a few days after I returned home, Major Miller took my boat and went out in the bay off against Northport, and captured an English sloop, bound to Castine, with supplies for the troops, &c. After Major Miller captured the sloop, he returned my boat to me, and paid me for the use of it, and also for my services. I always thought that Major Miller acted as a private citizen in all his privateering expeditions against the British during the war, and that he acted in that capacity when he captured the English sloop Mary. I never heard a word said about Major Miller being a revenue officer at that time.

CHARLES THOMAS.

STATE OF MAINE, *Waldo, ss :*

Personally appeared before me the above-named Charles Thomas, and made oath that the foregoing deposition, by him subscribed, is true. I further certify, that I am personally acquainted with the said Charles Thomas, and that his declarations, under oath, are entitled to credit.

JOSEPH MILLER,
Justice of the Peace.

DECEMBER 9, 1837.

STATE OF MAINE, *Waldo county, ss :*

I, Nathaniel M. Lowney, clerk of the judicial courts for said county, certify that Joseph Miller is a magistrate for said county, and that the foregoing signature, purporting to be his, is genuine.

In testimony whereof, I have hereunto subscribed my name, and affixed
[L. s.] the seal of the supreme judicial court of said State, this 15th day of December, in the year of our Lord 1837.

N. M. LOWNEY,

Clerk of the courts for said county.

No. 3.

I, Alfred Johnson, of Belfast, Maine, of lawful age, testify and say: That I resided in Belfast aforesaid during the late war between the United States and Great Britain, and was well acquainted with Major Noah Miller, of Northport, an adjoining town. Major Miller was a very active officer of the militia, and signalized himself as an efficient partisan and a vigilant observer of the movements of the enemy in our vicinity; and it is my opinion that no one person in this quarter was oftener mentioned as a brave and useful friend of his country during that war. About one year, according to my best recollection, he was in the actual service of the United States as a captain of volunteers; and after the expiration of this service, it was understood—and I have no reason to doubt it—that he was in the revenue department of the Government—in what capacity, or whether officially or as a volunteer, I cannot say—and assisted to prevent an illicit intercourse with the enemy. He received a wound in a personal rencounter growing out of his said employment. During the war, he made a capture of a valuable vessel and cargo, attempting to introduce goods of the enemy into this country. And in doing this, it was at the time the general opinion that the said capture was made by him as a private citizen, at his own risk, responsibility and expense.

ALFRED JOHNSON.

STATE OF MAINE, *Waldo, ss :*

Personally appeared the above-named Alfred Johnson, and made oath to the foregoing deposition, as truth. Before me,

JOSEPH MILLER,

Justice of the Peace.

NOVEMBER 24, 1837.

STATE OF MAINE, *Waldo county, ss :*

I, Nathaniel M. Lowney, clerk of the courts for said county, certify that Joseph Miler is a magistrate for said county of Waldo, and that the foregoing signature, purporting to be his, is genuine. I further certify, that the within-named Alfred Johnson is well known to me; that he is judge of the court of probate for said county, and that his declarations, on oath, are entitled to credit.

In testimony whereof, I have hereunto affixed the seal of the supreme judicial court of said State, and subscribed my name, this 24th day
[L. s.] of November, in the year of our Lord 1837.

N. M. LOWNEY,

Clerk of the courts for said county.

I, William P. Preble, of Portland, in the State of Maine, depose and say: That in the month of November, A. D. 1814, Josiah Hook, collector of the customs for the district of Penobscot, reported to me, at that time attorney of the United States for Maine district, the sloop *Mary* and cargo, as being then in his possession and custody, to the end that said vessel and cargo might be proceeded against, condemned, and confiscated to the United States. I accordingly drew a libel, and filed the same in the district court, setting forth the facts as reported to me by said Hook, the collector; and the property was afterwards, in due time, condemned and confiscated to the United States. The place where the *Mary* was captured and seized, it appeared was in Mr. Hook's district, and within the waters of the United States; and the property, by the then existing statutes, was liable to seizure and forfeiture, without regard to the fact of its being enemy's property. Hence, as well as I can remember, the collector claimed a right to take the property into his possession, and to receive and account with the Government for the proceeds.

I further depose and say: That it was well understood and notorious that said *Mary* and cargo were, in fact, captured and seized by Major Noah Miller, who, having discovered the vessel from the shore, put off in a boat, with a small crew, and took possession of her, and brought her into Camden; and that the capture was wholly due to the activity and enterprise of said Miller and his assistants.

I further depose: That I well remember it was understood at that time that said Miller met with a good deal of difficulty in securing the property after its capture, and that it was wholly owing to his active exertions, aided by his boatmen, that the property was removed to a place of safety; and that, if it had not been so removed, it would have been rescued by the enemy's armed forces then in the vicinity. I have since understood, and now fully believe, that said Miller, in making said capture, and securing said property, acted solely from his own promptings, and in no respect under the authority and instructions of Mr. Hook, the collector.

And I further depose: That I well remember said Miller was in those days distinguished for his zeal and activity (after I knew him) in carrying on a partisan warfare against the enemy, and the contraband trade carried on with them in that quarter, while the British forces were in possession of Castine.

WILLIAM P. PREBLE.

CUMBERLAND, ss :

Then personally appeared William Pitt Preble, and made oath that the foregoing statement, by him subscribed, is true, according to the best of his knowledge, recollection, and belief. Before me,

JOHN L. MEGQUIER,
Justice of the Peace.

AUGUST 18, 1837.

No. 5.

Extract from the testimony of Philip Ulmer, taken in 1814, to be used, as is understood, in court, in the case of the Mary.

Answer to the 3d interrogatory: The sloop Mary was taken in Penobscot bay, as I was informed, by Captain Miller, being English property. About two hours after her capture, the sloop was brought into Camden. Sailed under British colors. No resistance made. Seized by the revenue officers.

Answer to the 5th interrogatory: The sloop is about sixty tons. There were six men on board, officer included, and a lady, the captain's wife. They all appeared to be English or Irish. The captain said he had lived in Halifax about ten years. I do not know when or where they came on board.

Answer to the 32d interrogatory: I have stated all I know, except the conversation I had with Mr. McWaters, relative to a ransom, and the captain. After McWaters had offered Captain Miller £10,000 to ransom the vessel, and me £1,000 if I would not interfere to prevent the ransom, the captain then told me the property was all British; that they were but four days from Halifax, and that they were towed all the passage by the sloop-of-war Pelter.

No. 6.

WASHINGTON, June 24, 1842.

GENTLEMEN: Having been requested, in behalf of Major Noah Miller, to communicate to your committee certain facts in relation to a capture made by him at a late period of the last war with Great Britain, which is the foundation of a claim on his part now under your consideration, I have the honor to state that I was the person who then held the office of district attorney for Maine. Immediately after Miller had made the capture, he found himself troubled by the pretensions of certain persons then in the military service, who seemed to have claims to a share of the prize, from the fact that the troops on shore were in sight. Major Miller was ignorant how to proceed with the property, or what to do with it. It was in imminent danger of recapture, if not removed, and he had no means of removing it, besides the risk of incurring a forfeiture. Under these circumstances, he applied for aid to the collector of the district. The collector accordingly took charge of the property, and had it removed, secured, and condemned. After condemnation, the proceeds were paid over to the collector, to be by him disposed of and accounted for according to law. I had understood that Miller was an officer of the customs at the time of the capture; and the date of his commission as inspector indicated the fact to be so. I learned afterwards that the commission was purposely ante-dated; and the fact was undoubtedly so. The act of the capture was an act of Miller's own devising and enterprise, unprompted by any one, and unaided by any one except his boat's crew. Miller continued afterwards in the United States service as inspector, and until our troubles of that period ceased, and was very active, vigilant, and enterprising; and no man did better service than he. He was the terror of smugglers and traders with the enemy. More than once he

barely escaped with his life, so that it became necessary to caution him to be less venturesome and daring.

With great respect, gentlemen, your obedient servant,

WILLIAM P. PREBLE.

The COMMITTEE to whom is committed
the petition of Noah Miller.

No. 7.

I, Samuel A. Whitney, of Lincolnville, in the county of Waldo, and State of Maine, on oath, do say: That in the fall of 1814, while the British forces were at Castine, Major Noah Miller came on shore from a sloop then lying off this place, and informed me and others that he and others had taken possession of the aforementioned vessel; that she was an English vessel, bound from St. John's to Castine, laden with English goods; that they took her in Penobscot bay, within a few miles of Castine, and wanted to get Major Philip Ulmer to go with him on board, to take charge of her, to take her into some place of safety, (Major Ulmer being a custom-house officer, seaman, and pilot;) that the said Ulmer did go on board with said Miller, and took said vessel into the harbor of Camden, and immediately landed the goods, and caused them to be transported overland to the town of Warren, for safety; that the next day an English frigate went from Castine, anchored off Camden, and sent in a demand for the goods; and Camden had to give up hostages, to prevent damage being done to the town, which were carried off.

I further say, that Christina, wife of Paul H. Stevens, esq., Susan, wife of Samuel Buckmer, and Grace, wife of Job White, are the daughters and heirs-at-law of the aforesaid Philip Ulmer, deceased.

SAMUEL A. WHITNEY.

WALDO, ss:

Then personally appeared the above-named Samuel A. Whitney, and made oath to the truth of the above deposition, by him subscribed. Before me,
JACOB S. ADAMS, J. P.

DECEMBER 3, 1838.

No. 8.

THOMASTON, MAINE, December 3, 1841.

MY DEAR SIR: In behalf of a very worthy but unfortunate man, allow me to call your attention to the claim of *Noah Miller*. It is desirable that it should be *early* reported, in order that it may stand a chance of going to the other House in season to obtain the action of that body. It has passed the Senate three or four times, having received the unanimous sanction of the Committee on Commerce from the first examination of the subject in 1838. Let me refer you to Governor Davis's report on the subject, with accompanying documents—being Doc. No. 204, 2d session 25th Congress. The late chairman, Mr. King, has advocated it. I presume it will find no opposition.

You will perceive that the bill which passed the two last sessions appropriates \$7,500 for Miller, and \$2,500 for others, instead of the \$10,000 for Miller alone. This was a sort of compromise, assented to by Miller and others, to avoid collision and delay, though, in point of fact, Miller has the sole claim. I hope no modification more unfavorable to Major Miller will be consented to on any account. Governor Davis, just before he resigned his seat, said to me that he felt a deep interest in this claim of Major Miller, and regretted that any compromise (referred to above) had been assented to. He said that Miller was shown to be a very deserving man, and ought not divide with any one. He yielded to it only because Miller himself assented; and that, he thought, was hardly a sufficient reason. He spoke with some feeling about it.

I will not trouble you further now than to ask the favor of your making as *early* a report of a bill as practicable, if the committee see no objection. If there should be any thing that may require explanation before the Senate act upon it, I will thank you to apprise me of it.

Wishing you, my dear sir, a pleasant, useful, and *harmonious* session, I remain, very respectfully and faithfully, your obedient servant,

JOHN RUGGLES.

Hon. JABEZ W. HUNTINGTON,
Senator United States.

P. S. The bill referred to has twice or three times received the *favorable* consideration of the House committee, but it has never been reached by the House.

No. 9.

I, John Studley, of Lincolnville, in the county of Waldo, and State of Maine, of lawful age, do testify and say: That, in the fall of 1814, the British sloop *Mary* was captured by Noah Miller and others, and hove to in Penobscot bay, near where I lived, about seven miles from Camden. Miller came on shore, and got Major Philip Ulmer to go on board and take charge of her and carry her into Camden, he being a revenue officer; which was effected the same day, and her cargo discharged.

And I further say, Christina Stevens, Susan Buckmer, and Grace White, are children and lawful heirs of the said Philip Ulmer.

JOHN STUDLEY.

WALDO, ss :

Then the above-named deponent personally appeared, and made oath to the foregoing deposition, by him subscribed, to be true. Before me,

DAVID MCKOY, J. P.

NOVEMBER 30, 1838.

No. 10.

I, Jacob S. Adams, of lawful age, do testify and say: That, in the fall of 1814, I resided at Lincolnville, in the county of Waldo, and State of Maine. I was at the shore at the time, and saw Major Philip Ulmer, together with

Major Noah Miller, go on board the British sloop Mary, then lying in the bay. The report was, that they were going with him to Camden. I then went immediately to Camden by land, and met the sloop there. Major Philip Ulmer was on board said sloop, and appeared to have the command of her, and appeared to take an active part and be principal in unlading her and securing the goods.

And I further say, that Christina Stevens, Susan Buckmer, and Grace White, are children and lawful heirs of said Major Philip Ulmer, deceased.
JACOB S. ADAMS.

WALDO, ss :

Then the above-named deponent personally appeared, and made oath to the foregoing deposition, by him subscribed, to be true.

DAVID McKOY, J. P.

DECEMBER 1, 1838.

No. 11.

LINCOLNVILLE, December 5, 1843.

DEAR SIR : The circumstances concerning the claims of the heirs of Major Philip Ulmer, late of Lincolnville, I will briefly relate : In the fall of 1814, Noah Miller, with three or four others, boarded a British sloop, with a valuable cargo on board, in Penobscot bay, about five or six miles from the British fleet, then lying at Castine. After securing the crew, Miller left the prize in charge of his men, and went on shore to procure the assistance of Major Ulmer, then a shipmaster and pilot, who immediately went on board, took charge of the prize, and, at the imminent risk of being retaken by the British, carried her into Camden, where the cargo was taken out, sent to Portland, and sold, Government taking a large proportion, (which has since been proved does not belong to it,) the rest being divided among the crew. Major Ulmer receiving an equal share for his important services; and, sir, what we petition for is, that his heirs may receive a share of that which was awarded to Government.

With great esteem, I am yours, &c.,

PAUL H. STEVENS.

HON. GEORGE EVANS.

P. S. Should you, sir, use your influence with the other members, you will secure our warmest gratitude.

P. H. S.

No. 12.

I hereby certify, that I have been personally acquainted with Major Noah Miller, of Lincolnville, in the State of Maine, since June, 1821. At the time of my first acquaintance he was affected with paralysis of the inferior extremities, to such a degree as to render them entirely useless. His general health was very much impaired, and his difficulties gradually increasing for ten or twelve years, during a considerable part of which time he was perfectly helpless, and his life despaired of. He has recovered so

far as to be able, by the assistance of crutches, to support the weight of his body and move a short distance; and his general health has within a year or two somewhat improved. He is still, however, unable to walk without assistance. During his protracted illness, I have been frequently consulted, affording ample opportunity to learn his real condition. When I first saw him, he informed me that he had been in his present condition for some five or six years, it having introduced itself instantaneously. He shows a scar in his right hand, from a wound which has nearly deprived him of its use, which (I have been informed by the surgeon who attended it) was received during the last war, while endeavoring to prevent a man from conveying supplies to the enemy at Castine.

J. P. ALDEN, *M. D.*

STATE OF MAINE, *Waldo, ss :*

Personally appeared the above-named J. P. Alden, and made oath to the truth of the foregoing deposition, by him subscribed. Before me,

JOSEPH MILLER,
Justice of the Peace.

NOVEMBER 24, 1837.

STATE OF MAINE, *Waldo, ss :*

I, Nathaniel M. Lowney, clerk of the courts for said county, certify that Joseph Miller is a magistrate for said county, and that the foregoing signature, purporting to be his, is genuine. I further certify that the within-named J. P. Alden is well known to me: that he is a man of truth, and that his declarations on oath are entitled to credit.

In testimony whereof, I have hereunto affixed the seal of the supreme [L. S.] judicial court of said State, and subscribed my name, this twenty-fourth day of November, A. D. 1837.

N. M. LOWNEY,
Clerk of the courts of said county.

No. 13.

UNITED STATES OF AMERICA.

DISTRICT OF MAINE, *ss :*

To the Hon. David Sewall, esq., Judge of the District Court of the United States in and for Maine District:

Be it remembered, that William P. Preble, attorney for the United States in and for Maine district, in his proper person, comes before the said judge, and as well in behalf of said States as of Josiah Hook, esq., collector of the district of Penobscot, and of all others whom it may concern, libels, propounds, and gives the said judge to understand and be informed, that since the declaration of war between the United States of America and the United Kingdom of Great Britain and Ireland, and during the continuance of the same. (to wit, on the first day of November instant,) the said Hook, by virtue of his commission as collector aforesaid, did, in and with a revenue boat of said States, and with the assistance of Noah Miller, an

inspector of the customs for said district of Penobscot, acting under and by the order of said Hook, subdue, seize, capture, and take the vessel or sloop called the *Mary*, whereof Benjamin Darling or Dalling was master, and her cargo on board said vessel, and afterwards, on the same day, did bring the said vessel and cargo into the port of Camden, in said district of Maine, where she now lies, for adjudication. And the said attorney further propounds and says, that, at the time of said capture and seizure, the said vessel, her tackle, apparel, and furniture, and her cargo, did belong to the King of said United Kingdom, or to some subject or subjects thereof, and as such, or otherwise, liable to capture in manner aforesaid, and to be condemned or confiscated to said States; all which is public and notorious, of which due proof being made, the said vessel, her tackle, apparel, and furniture, and her cargo, ought to be decreed and adjudged forfeit to the use of said States.

Wherefore, the said attorney prays the advisement of this court here in the premises, and that due process and monition may be had in this behalf, according to the course of admiralty proceedings in such cases; and that the said vessel, her tackle, apparel, and furniture, and her cargo aforesaid, may, by the definitive sentence of this court, be adjudged and decreed forfeit and confiscated to said States, and the proceeds thereof be disposed of according to law.

Dated this 17th day of November, A. D. 1814.

Filed this 17th November, 1814.

W. P. PREBLE,

U. S. Attorney, Maine District, and proctor to J. Hook.

UNITED STATES, MAINE DISTRICT, ss :

DISTRICT COURT, CLERK'S OFFICE, *August 17, 1837.*

In testimony that the foregoing is truly copied from the original on file in this office, I have hereto set my hand, and affixed the seal of
[L. s.] the district court, the day and year above written.

JOHN MUSSEY,


Clerk United States Courts.

No. 14.

DISTRICT OF MAINE, ss :

The President of the United States of America to the Marshal of our District of Maine, or his deputy, greeting:

[L. s.]

Whereas, by the sentence of our judge of our district court, begun and holden at Portland, within and for our district of Maine, on the first Tuesday of December, 1814, a decree of condemnation was obtained by the United States against the sloop *Mary* and cargo, except three trunks of goods and articles, marked  No. 378, No. 379, and No. 380, captured and seized by the collector of Penobscot, as to us appears of record, whereof execution remains to be done :

We command you, therefore, that you cause the said sloop *Mary* and

cargo, except as aforesaid, to be sold at public auction to the highest bidder, at Portland, within our said district, after first giving public notice of the time and place of such sale, as our law directs. And the moneys arising from said sale, after deducting twelve hundred and sixty-four dollars fifty-eight cents, the costs of prosecution, and one dollar for this precept, together with your own proper fees and charges, you will dispose of as follows, viz: one moiety to be paid into the treasury of the United States, and the other moiety to the collector of the district of Penobscot, for the uses prescribed by our law in such cases made and provided: and make return of this writ, with your doings herein, into our said court, to be holden at Wiscasset the last Tuesday of February next.

Witness David Sewall, esq., at Portland, the fifteenth day of December, in the year of our Lord one thousand eight hundred and fourteen.

H. SEWALL, *Clerk.*

N. B. The return of the doings on this writ is annexed by seals.

Attest:

HY. THORNTON, *Marshal.*

MAINE, ss.:

Pursuant to the annexed warrant of sale, I advertised the time and place of sale of the sloop Mary and cargo, according to law, in the Portland, Boston, and New York newspapers, and on the day of sale advertised, viz: January 5, sold at public auction to the highest bidders that part of the cargo advertised for sale in Portland (the other part and the said sloop Mary being sold by deputy Tebbets, as per his account annexed) to sundry persons, as per account annexed; the amount of, as per said account, being sixty-five thousand nine hundred and forty-three dollars and fifty-two cents, viz: ----- \$65,943 52

From which I deduct the following costs and charges, viz:

Court bill of costs, as taxed by the court----- \$1,265 58

Advertising in Portland, \$5; extra advertising,
New York, &c., \$20----- 25 00

Service precept, \$2; commission on \$500, at
2½ per cent., \$12 50; commission on \$65,-
443 52, at 1½, \$818 04----- 832 54

Travel to return precept, \$3; extra incidental
charges, \$35----- 38 00

To costs and charges paid Collector Hook for
transportation of goods from Warren and
Newcastle to Portland, being a distance of
eighty miles; also, for storage, and guard-
ing goods, labor, preparing invoice, printing
catalogues, &c., for sale, as per his account 952 54

3,113 66

62,829 86

Amounting to three thousand one hundred and thirteen dollars and sixty-six cents, which deducted from gross amount of sales, leaves a balance of sixty-two thousand eight hundred and twenty-nine dollars and eighty-six

cents, which balance I have paid over to Josiah Hook, esq., collector, as per his receipt below, to be disposed of according to law.

HY. THORNTON,
Marshal of Maine.

JANUARY 14, 1815.

PORTLAND, January 14, 1815.

Received of Henry Thornton, marshal of Maine, the sum of sixty-two thousand eight hundred and twenty-nine dollars and eighty-six cents, being the above balance of \$62,829 86, to be disposed of according to law, and have signed duplicates. I have also received twelve hundred dollars, made up in court bill of costs, and nine hundred and fifty-two dollars and fifty-four cents, costs of transporting goods from Warren and Newcastle, and other costs and charges, as per my account, and received twenty-four dollars, commissioner's fees.

JOSIAH HOOK, *Collector.*

UNITED STATES, MAINE DISTRICT, ss :

DISTRICT CLERK'S OFFICE, *August 17, 1837.*

In testimony that the foregoing is truly copied from the original on file in this office, I have hereto set my hand and affixed the seal of the district court, the day and year above written.

JOHN MUSSEY,
Clerk U. S. Courts.

No. 15.

DISTRICT OF MAINE, ss :

The President of the United States of America to the Marshal of our District of Maine, or his deputy, greeting :
[L. s.]

Whereas, by the sentence of our judge of our district court, begun and holden at Wiscasset, within and for our district of Maine, on the last Tuesday of February, 1815, a decree of condemnation was obtained by the United States against three trunks of goods, marked \bigtriangleup and numbered 378, 379, and 380, (part of the cargo of the sloop *Mary*, condemned at the last December term of our said court,) seized by the collector of Penobscot, and libelled as enemy's property, and decreed forfeited to said United States—one moiety to their use, and the other moiety to the said collector, as to us appears of record, whereof execution remains to be done :

We command you, therefore, that you cause the said three trunks, with their contents, to be sold at public auction, to the highest bidder, at Portland, within our said district, after first giving public notice of the time and place of such sale, as our law directs. And the moneys arising from said sale, after deducting fifty-three dollars and fifty-eight cents, the costs of prosecution, and one dollar for this precept, together with your own proper fees and charges, you will dispose of as follows, viz : one moiety to be paid into the treasury of the United States, and the other moiety to the collector

of the district of Penobscot, for the uses prescribed by our law in such cases made and provided ; and make return of this writ, with your doings herein, into our said court, to be holden at Portland, the last Tuesday of May next.

Witness David Sewall, esq., at Portland, the tenth day of March, in the year of our Lord one thousand eight hundred and fifteen.

H. SEWALL, *Clerk.*

MAINE, ss :

Pursuant to this warrant, I advertised the time and place of sale of the within-named trunks of goods in a public newspaper, printed in Portland, according to law, and on the 12th instant sold the same at public auction, to the highest bidder, according to an account hereto annexed, and the amount of which sales was----- \$2,225 33

Costs of court----- \$54 58

Advertising----- 5 00

Service----- 2 00

Commission----- 34 06

Extra charges and pay for auction room and labor, including precept----- 5 00

100 64

2,124 69

Which sum of twenty-one hundred and twenty-four dollars sixty-nine cents I have paid to Collector Hook, as per his receipt below.

HY. THORNTON, *Marshal.*

APRIL 15, 1815.

APRIL 15, 1815.

Received of H. Thornton, marshal of Maine, twenty-one hundred and twenty-four dollars sixty-nine cents, in full for the net amount of the sales arising from the within-named goods, to be disposed of according to law ; also, received twenty-eight dollars on the within bill of costs, as storage and for depositions.

JOSIAH HOOK, *Collector.*

UNITED STATES, MAINE DISTRICT, ss :

DISTRICT CLERK'S OFFICE,
August 17, 1837.

In testimony that the foregoing is truly copied from the original on file [L. s.] in this office, I have hereto set my hand and affixed the seal of the district court, the day and year above written.

JOHN MUSSEY,
Clerk United States Courts.

No. 16.

TREASURY DEPARTMENT,
Register's Office, February 7, 1838.

I do hereby certify, that Josiah Hook, late collector of Penobscot, has accounted for the forfeiture in the case of the sloop Mary and cargo, and that the United States' proportion of said forfeiture amounted to thirty-two thousand one hundred and eighty-eight dollars and thirty-two cents, as appears from his accounts for the first quarter of the year 1815, filed in this office.

T. L. SMITH, *Register.*



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1852.

Ordered to be printed.

Mr. BADGER made the following

R E P O R T :

[To accompany bill S. No. 224.]

The Committee on Naval Affairs, to whom was referred the petition of Martha L. Downes, widow of Lieutenant Downes, commander of the United States schooner Grampus at the time she was lost, praying that the same allowance of pay may be made to the widows and orphans of persons belonging to that vessel as have been made in similar cases, have had the same under consideration, and report :

That by an act approved 29th April, 1802, there was provided to be paid to the widows and orphans of the officers, seamen and marines who were lost in the ship *Insurgent*, and brigantine *Pickering*, a sum equal to *four months'* pay of their respective husbands or fathers ; an act of 20th April, 1816, gives to the representatives of the officers and crew of the sloop *Wasp*, *twelve months'* wages ; an act of 2d March, 1817, gives to the widows, orphans, parents, brothers or sisters of the officers and crew of the brig *Epervier*, *six months'* pay, in addition to the pay due to the deceased at the time said brig was supposed to be lost ; an act of 24th April, 1830, makes the same provision for the relief of the widows or near relatives of those lost in the schooner *Sylph* ; the act of 15th June, 1844, fixes days on which the schooners *Grampus* and *Sea Gull* were respectively assumed to have been lost, to which dates the pay of the officers and crews were to be computed, and from which pensions of widows and orphans were to commence, but made *no provision* for extra pay, as in the other cases named. An act of 14th August, 1848, grants to the widows, children, parents or minor brothers and sisters of the officers, seamen and marines who were lost in the brig *Somers*, *twelve months'* pay, in addition to the pay due to the said deceased.

No reason is known to exist for this discrimination against the widows and orphans of the officers, seamen and marines lost in the *Grampus* and *Sea Gull* ; and without such reason, the discrimination must be deemed unjust. The committee therefore report a bill to supply the omission in the act of June, 1844, and place the persons interested in the *Grampus* and *Sea Gull* on a footing of equality with those provided for in other similar cases.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1852.

Ordered to be printed.

Mr. SEWARD submitted the following

R E P O R T :

[To accompany bill S. No. 225.]

The Committee on Commerce, to whom was referred the petition of Robert T. Norris, praying a pension in consequence of injuries received while mooring the light-ship off Sandy Hook in 1839, report :

That Robert T. Norris was a regularly trained and licensed pilot in New York. In September, 1839, he was directed by the collector of customs at that port, to pilot the floating light-ship (belonging to the United States' government) from the East river, in New York, to the station off Sandy Hook. Having performed this duty, and being engaged in the act of mooring the vessel, the chain-cable slipped out of an open hauser-hole on the port-bow, in consequence of one of the stoppers giving way, and coming in contact with his person, badly injuring his right leg, and so violently wounding the left, that amputation was afterwards necessarily performed. By this accident the petitioner was disabled from pursuing his vocation, and his means of support rendered precarious, and he is now in needy circumstances.

Considering that the accident happened from some defect or neglect about the ship for which the pilot was not responsible, and that the ship belonged to the government and was under its management, the case addresses itself with so much force to the magnanimity, if not to the justice of the United States, that the committee are not willing to advise that it be rejected altogether without an examination by Congress.

At the same time, the committee cannot advise the precedent of granting pensions for injuries and wounds received in the civil service of the United States. They therefore have thought proper to submit a bill providing for the payment of a fixed sum to the petitioner, and respectfully invite a consideration of the subject by the Senate.

The committee refer to a report made in the House of Representatives, May 2, 1850, in the case of Eli Darling, which was somewhat analogous, a copy of which is herewith submitted.

IN THE HOUSE OF REPRESENTATIVES—May 2, 1850.

The Committee on Naval Affairs, to whom was referred the petition of Eli Darling, an employee at the navy yard, Brooklyn, New York, having had the same under consideration, report:

That from the evidence presented to the committee, it appears that Eli Darling was employed at the navy yard as a dock builder at the time of receiving the injury; that he had been so employed for many years; that he was a sober, industrious, useful and worthy man. It also appears that while employed in driving piles, a splinter was thrown from the pile by the force of the battering hammer, striking Mr. Darling in the face, most dreadfully lacerating the flesh, destroying both eyes, and disfiguring his person. This calamity occurred on the 7th October, 1834; since which time he has not only been totally blind, but otherwise disabled from injuries to other parts of his body, received at the same time and from the same cause by which he lost his eyes; and while the committee would not advise any change in the general policy of the government in providing a limited and scanty support to those who are injured or disabled in its service, as regularly commissioned officers or enlisted seamen, or marines, they conceive there is no danger in so far departing from that rule in certain meritorious cases, as to preclude from the care of the government all persons in its service who do not happen to be entered upon its rolls for a series of years, according to the laws, rules and regulations of the navy. Cases may occur where a volunteer or laborer may be as richly entitled to the bounty of the government for injuries received in its service, as any individual covered by the mantle of the law; and such a case is presented by the petitioner, Eli Darling, who was a sober, industrious, worthy mechanic, employed by the government for a series of years prior to the calamity which befel him; a calamity of such nature and magnitude as to unavoidably excite the commiseration and sympathy of every feeling heart. As all cases of a like character must be brought to the consideration of Congress, and tried and passed upon their intrinsic merits, the committee entertain the opinion that no injurious precedent would be afforded, nor any pretext furnished, for abuse in after times; and, taking into consideration the fact that in the case of James Jones, an employee as rigger, not enrolled or enlisted, as one of those meritorious cases where the government may and ought to interpose to save from intense suffering, by poverty, one who was made helpless while in the service of his country by an unforeseen and unavoidable accident, that the same parental care may be extended to Darling, and therefore offer a bill for his relief and request its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1852.

Ordered to be printed.

Mr. SEWARD, from the Committee on Commerce, made the following

REPORT:

[To accompany bill S. No. 226.]

The Committee on Commerce, to whom was referred the petition of Lewis H. Bales and William Lacon, report:

The petitioners were manufacturers and dealers in iron, in the State of Connecticut, and, about the year 1829, extended their business by establishing a branch of their firm in Liverpool, in England, where they entered largely into the manufacture of wheel-tire, palisading, and other manufactures of iron, for the purpose of importing them into the United States; that they were induced to set up this establishment, and make these importations, in consequence of the construction universally given to the then existing laws imposing duties upon imports, and sanctioned by the construction given to those laws by the First Comptroller of the Treasury, in two letters to the petitioners, copies of which are annexed, marked A and B, viz: that articles such as were subsequently imported by the petitioners were subject to an ad valorem duty of 25 per cent. as manufactures of iron, and not to the duty, as upon bar-iron, of \$37 per ton.

It appears that, relying upon this construction, generally given to the law, but especially upon having this construction confirmed by the Comptroller in his letters to the petitioners, (and which construction has since been adopted by the courts and juries,) they imported into New York several cargoes or invoices of iron, and entered them as manufactures of iron, and gave bond for the duties accordingly; that afterwards, upon further importations, the custom-house officers at New York, acting under instructions (as it is understood) from the treasury, which had adopted a new construction of the law, insisted that the same should be entered as subject to the specific duty of \$37 per ton, instead of the duty of 25 per cent. ad valorem, as before; and, moreover, that for those importations, for which bonds had already been given, such further sum should be paid as would raise the duty thereon to a sum equal to the specific duty of \$37 per ton.

The petitioners resisted these demands of the custom-house officers, and in some cases they were sued upon their bonds for this additional duty, and in others they paid such additional sum demanded, but always under protest against the right of the collector to exact it. Other invoices or shipments, which had been previously ordered, arrived. The petitioners offered to enter them as *manufacture* of iron, and refused to enter them

otherwise ; in consequence of which, seizures were made, and proceedings instituted for a decree of forfeiture. The petitioners instituted a suit against the collector, for recovering back the money they had been compelled to pay beyond the amount of 25 per cent. ad valorem, and also an action of trespass for seizing the goods. This last action was tried, (the first being, by agreement, continued, to await the decision in the action of trespass.) The jury found for the petitioners, upon the ground that the iron imported was manufactures of iron, within the meaning of the act, and subject only to the duty of 25 per cent. ad valorem ; and it is understood that the court confirmed the decision of the jury. All the suits were then dismissed, the goods which remained were delivered up to the petitioners, and the collector refunded to them the additional duties he had received. But their business had been wholly broken up ; they had incurred very great expenses in counsel fees, and other charges of litigation, for which they ask to be indemnified by Congress. They claim to be reimbursed :

1. For the law charges and expenses necessarily incurred and paid by the petitioners.

2. Other expenses necessarily incurred in their endeavors to procure a release of their property, and not strictly chargeable as law expenses—such as the personal care, time, and attention, and travelling expenses of petitioners, amounting to many thousand dollars.

3. For expenses incurred and paid by the petitioners for storage of their goods while detained under seizure.

4. For the loss they sustained, in the nature of interest, from the time their money and goods were wrongfully detained, until they were restored.

Your committee are of opinion that the petitioners are entitled to relief, and ought to be indemnified for the expenses incurred and losses sustained, as stated under the two last mentioned heads of claim, and for costs paid by them and not reimbursed, and report a bill accordingly.

Reports have been made in favor of the petitioners in the years 1834, 1836, 1838, 1840, and 1846, but final action of legislation was never reached.

A.

TREASURY DEPARTMENT,
Comptroller's Office, April 14, 1829.

SIR : Your letter of the 6th instant is received. I am of opinion that wrought iron for palisading, ornamented with tops of different patterns, and others with plain and sharp tops, some round and some square, ready to be used in the state in which they are imported, as well as sheet-iron stove pipes, from three to six inches in diameter, are liable to a duty as "manufactures of iron."

Respectfully,
JOSEPH ANDERSON.

Mr. WM. LACON,
Stamford, Connecticut.

B.

TREASURY DEPARTMENT,
Comptroller's Office, March 22, 1830.

SIR: In reply to your letter of the 6th instant, I have to state that *iron hoops or rings for cart and wagon wheels*, complete for wagon-makers, and ready for coopers' use, for all kinds of casks, are considered to be manufactures of iron, within the meaning of the law, and, accordingly, are liable to an ad valorem duty of 25 per cent. I deem it proper to add that, by iron hoops and rings for cart and wagon wheels, you are understood as meaning cart and wagon tires, with the requisite holes in them, ready for being put on the wood, in the state in which they are imported.

Respectfully,

JOSEPH ANDERSON.

Mr. WM. LACON.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1852.

Ordered to be printed.

Mr. GWIN made the following

REPORT:

[To accompany bill S. No. 234.]

The Committee on Naval Affairs, to whom was referred the petition of James Glynn, a commander in the navy, praying that he may be credited, in his settlement with the department, with the amount of money which was stolen while in his charge on the coast of California, as acting purser of the United States ship Preble, have had the same under consideration, and report :

That during the cruise of the United States sloop-of-war Preble, on the west coast of Mexico, in 1850, the memorialist was necessarily compelled to perform the duties of purser of said ship, of which he was the commander, and that he was consequently charged with the public money, slops, &c., usually in the custody of the purser of a ship; that in April, 1850, the Preble being at anchor off the town of Benicia, in Upper California, Commander Glynn was ordered by Commodore Jones to convene a court of inquiry on board the United States ship Warren, then lying at San Francisco, distant about thirty miles; that while absent from the Preble, in the performance of the duty assigned him as president of said court, the iron money-safe of the ship was entered by means of false keys, and rifled of its contents, and other public money was embezzled and stolen from the ship; that as soon as practicable after his return, the particulars of the robbery were investigated by a court of inquiry, and authenticated extracts of its proceedings are filed by the memorialist. The result of this investigation disclosed a deficiency of money, clothing, and small-stores, amounting in the aggregate to the sum of \$1,338 70. It appears that all reasonable care was taken of the public funds and property, and yet a loss ensued, which falls upon the memorialist, unless the relief asked for by him be extended. The committee are satisfied that this case comes within the principle heretofore recognised by Congress of granting relief in similar cases, and therefore report a bill authorizing the amount of the loss to be credited to Commander Glynn in the final settlement of his accounts.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1852.

Ordered to be printed.

Mr. FOOT made the following

REPORT:

[To accompany bill S. No. 235.]

The Committee on Revolutionary Claims, to whom were referred the petition and papers in the case of the representative of Henry King, have adopted the report made to the Senate in this case, 8th March, 1850.

IN SENATE.—March 8, 1850.

The Committee on Revolutionary Claims, to whom were referred the petition and papers in the case of the representative of Henry King, have adopted the report in favor of said claim which was made in 1845, as follows:

“That said claim is in the form of an account, showing that said King served as a sergeant in the third Maryland regiment, from the 30th May to the 20th October, 1788, at \$10 per month; as commissary’s clerk, from 21st October to 31st December, 1778, at \$35 per month; as same, from 1st January, 1779, to 19th April, 1780, at \$50 per month; as assistant commissary of issues, from 10th May, 1780, to the 10th September, 1781, at \$75 per month, and for a retained ration during a small part of the above period, which latter item is £8 15s. The total is £862 10s. The United States are credited with various payments during that time, amounting to £150 18s. 8½d., the principal of which was made by the State of Maryland, of \$162 18s. 6½d., leaving a balance due King of £681 10s. 3½d.

“This claim was presented to Congress for settlement on the 5th March, 1791, and referred to a committee, whose report is as follows:

“The committee to whom was referred the petition of Henry King, late commissary of provisions in the southern department, report, that they find, on examination, that the petitioner has an authentic and well-attested claim on the United States; but not having made a timely presentation of it, the act of Congress of the 23d July, 1787, is a bar to its admission. The committee lament that any obstacle should arise to prevent the immediate adjustment of a claim which appears to be sanctioned by every equitable and just principle; but as the payment of the one referred to their examination would be an act of partial justice, they hesitate to recommend it,

unless a provision for all demands similarly situated should be deemed an act of propriety.'

"The Hon. Thomas Sprigg, chairman of that committee, in a letter to Mr. King, dated April 23, 1794, uses the following language, accompanied by a copy of the report:

" 'After several meetings of the committee to whom your petition was referred, and a full examination of the vouchers, we were unanimously of opinion that your claim was just. They requested me to write the report, and to express in strong terms the sense of the committee. The enclosed copy will show you what their opinions were. It is handed in, and has been read, but not taken up, nor do I expect it will be this session. There are such numbers under similar circumstances, that it will take up much time to decide on them.'

"King, living in Kentucky, at a distance from the seat of government, made no further movement in the claim until 1817, when he again petitioned Congress for payment. His petition shows that his original papers had been destroyed when this capital was taken in 1814; and such copies of them as he preserved were filed. A statement from Mr. Hagner, dated 8th January, 1842, states that all the papers connected with the settlement of such accounts as King's were 'no doubt destroyed in the burning of the treasury buildings.'

"As additional evidence, King's representative has filed a certificate from the register of the land office in Maryland, dated 25th January, 1841, in which he says:

" 'The office of auditor general was a few years ago abolished, and the records and papers of the Revolution placed under my charge. I have carefully examined them, and send you, herewith enclosed, a certificate from the muster rolls and army ledger, which is all the evidence they afford of the service of Henry King. The records of the Revolution are imperfect; most of the accounts of the commissaries, and other papers, were sent on to the general government many years ago, for the purpose of adjusting and settling the accounts between this State and the general government, and they were never returned; I have understood they were destroyed in the late war.'

"Enclosed was the following certificate:

" 'I certify that it appears from the musters of Maryland troops that Henry King enlisted on the 25th May, 1778, as a sergeant in the third regiment, and was transferred to the commissary's department in October, 1778.'

"Several depositions of soldiers who served with King are also filed in the case.

"Jeremiah King, a brother of the petitioner, states that they both entered the third Maryland regiment in 1778, then belonging to General Smallwood's brigade; that some time in the fall of the same year Henry King was sent to join John Elise at Fishkill landing as assistant commissary, which he continued in until the year 1780, when he, as commissary, was sent with General Smallwood's command to join the southern army; that he received letters from his brother while in the southern army; and that from his letters, and afterwards in conversation with his brother, he learned that his official papers had all been destroyed while in the south; that he knew Adam Jamison, who was a deputy commissary general in the army,

under General Smallwood. The deponent's character is shown to be such as entitles his statement to full credit.

"John Jacobs proves that King served as assistant commissary in the southern army, under General Greene, until September, 1781—he himself belonging to the same corps. Peter Brumback, another soldier in the same army, proves the same fact.

"An order from General Smallwood to King, addressed to him as commissary, dated 7th October, 1780, and three letters from Adam Jamison, who signs his name 'D. C. G. of issues,' dated in February, 1781, all addressed to King as 'A. C. of issues,' on official business connected with that office, and which are proved to be genuine, are filed.

"The resolution of Congress of the 11th May, 1779, allows pay as follows: 'That the assistant commissaries of issues, at every magazine, post, or brigade of the army, be allowed \$90 per month; and the clerks of the commissary general, and deputy commissary general of issues, the sum of \$80 per month.'

"The House of Representatives, in April, 1818, when acting on this subject, reversed a report of its committee unfavorable to this claim, and passed a bill directing its payment; but, from the lateness of the session, it was left among the unfinished business. King died in Kentucky, in 1820; and no execution of his will was had until 1835, when this claim was again presented. It has been pressed at various periods from that time to the present, without any final action upon it by Congress.

"Upon mature consideration of this claim, your committee are compelled to sustain it, and recommend its immediate payment. For more than fifty years it has been pressed. It was presented in 'an authentic and well-attested form' in 1794, and payment was evaded only because of the existence of the statute of 1787, barring all claims in the commissary department, if not presented within eight months from its passage—a notice altogether too short for justice, even if the claimant had not resided in the western country, where communication was at that time limited and slow. But Congress since that time has repeatedly disregarded those bars of its own creation, when justice required it. In this case, the original papers having been burned, they have been substituted as far as possible by others, which are in themselves satisfactory, but more so when taken in connexion with the fact of the claim having been made as early as 1794, and then accompanied with sufficient vouchers, which have been since destroyed while in the archives of the nation.

"Should the amount due the petitioner bear interest; and if so, from what period? This committee believe that it should bear interest from the time of its presentation in 1794. It was due for thirteen years previous; and according to strict justice, perhaps, interest should commence at the time it became due. But no good reason or principle can be urged against its allowance from the time it was presented for payment, if that payment was withheld by the government. In the case of Russwurm's heir, the Senate at its last session allowed interest on a claim of no greater merit, and permitted it to commence long anterior to the time of its presentation, because the demand was not made, in consequence of the heir being ignorant of his right, until informed of it in 1837.

"The committee therefore report a bill for the relief of the representative of Henry King."

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1852.

Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT:

[To accompany bill S. No. 176.]

The Committee on Pensions, to whom was referred "A bill for the relief of William Bedient, late a sergeant in the fourth regiment of artillery," report:

That the deposition of said William Bedient sets forth that he enlisted the 20th of January, 1840, and was then sound in body and of a firm and vigorous constitution, as would appear by the certificate of Doctor Sweeny, a surgeon by whom he was examined. That he re-enlisted in November, 1844, and was still sound in body and constitution, as would appear by the certificate of the examining surgeon, Doctor J. B. Finley. He was appointed a sergeant while stationed at Puebla, in Mexico, in 1848. While stationed at Pensacola, in Florida, he was discharged, on the examination of Doctor Randall, post surgeon, by reason of hernia. That from 1840, when first enlisted, to the time of his discharge, in June, 1849, he was constantly, and without furlough or other interruption, in the line of his duty, and in the actual service of the United States. That his health was perfectly good and his body entirely sound, until he was sent to Point Isabel, in Texas, in 1846, where, in August, in consequence of exposure and fatigue, he contracted fever and ague; and that after the reduction of the disease by medical treatment, he first perceived the hernia, which resulted in his discharge.

Statements are made by Colonel Gardner, Major W. W. Morris, Lieutenant Colonel Brown, and Brigadier General Childs, all of the United States army, (to whom the deponent is personally known, having been under their command,) very favorable to the character and conduct of said deponent; and Assistant Surgeon Jos. Eaton, of the army, in a letter dated December 27, 1851, addressed to Major W. W. Morris, states that he had examined the deponent, and that he was "three-fourths disabled from obtaining a living by manual labor."

The Commissioner of Pensions, in a letter to the chairman of the committee, dated February 2, 1852, says: "Had the evidence of a commissioned officer been produced, to show, in positive terms, that the rupture was incurred in the line of his duty," the claim to a pension would have been allowed at the Pension Office. The proof may not strictly conform to the regulations which govern in the Pension Office in similar cases, but the committee deem it sufficient to justify the passage of the bill referred to them, and they report the same without amendment.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1852.

Ordered to be printed.

Mr. JONES, of Iowa, made the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Abigail Brown, report :

That the petitioner is the widow of Lieutenant Ebenezer Brown, who was an officer of the army of the Revolution, and was on the pension roll at the time of his death, in 1844; and she prays that the pension allowed to her late husband may be continued to her.

The evidence accompanying the petition shows that she was married to her late husband in the year 1818 or 1819. The committee do not deem it expedient to extend the operation of the pension laws, in regard to the widows of revolutionary officers and soldiers, beyond the existing provisions; and ask to be discharged from the further consideration of said petition.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1852.

Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Esther Scollay, report:

That the petitioner is the widow of John Scollay, a non-commissioned officer of the army of the Revolution, who died in 1826, and whose name, at the time of his death, was on the pension-roll. She prays a continuance of her late husband's pension to herself; but as her marriage with her late husband did not occur until 1808, she is debarred from the benefits of the act of July 29, 1848; and as there is no sufficient reason shown for a special act in the petitioner's case, the committee ask to be discharged from the further consideration of said petition.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1852.

Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Nathaniel Mothershead, report:

That the petitioner prays for a pension, but there is no proof accompanying the petition to show that the petitioner has a claim, on account of wounds received, to a pension; nor is there any evidence that his services, even by his own statement, were of more value than the services of thousands who have been discharged from the ranks of our army, and whom the pension laws do not embrace. The committee, therefore, ask to be discharged from the further consideration of said petition.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1852.

Ordered to be printed.

Mr. GEYER made the following

REPORT:

[To accompany bill S. No. 240.]

The Committee on the Judiciary, to whom was referred the petition of John Jackson, Joseph Pineau, and Louis A. S. Smith, report:

That it appears from the documents accompanying the petition, that the petitioners, respectively, attended the circuit court of the United States for the district of Massachusetts, held at the city of Boston, in October, 1849, as witnesses on behalf of the United States, at the trial of Francis Martin, on an indictment for wilfully sinking and casting away the schooner Abby Hammond; that they were severally summoned for that purpose, at Port au Prince, on the island of St. Domingo, their place of residence, and travelled thence to the city of Boston, in obedience to the summons; that the court taxed and allowed to each of them mileage at the rate of five cents per mile, but the account was disallowed, and payment refused by the accounting officers of the treasury.

Under these facts, the committee are of opinion that the petitioners are entitled to be paid a just compensation for travelling from their place of residence to the place of trial, and returning thence. They find that in the case of William T. Holland, who attended a court of the United States held at the city of Ricemond, in the State of Virginia, from the city of Rio de Janeiro, in the empire of Brazil, Congress, by an act for his relief, approved 20th July, 1848, allowed to him the same mileage allowed by law to other witnesses attending the courts of the United States. This the committee regard as the expression of the opinion of Congress as to the rate of compensation in like cases, and therefore report a bill, allowing the petitioners the mileage allowed by law to witnesses attending the courts of the United States.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1852.

Ordered to be printed.

Mr. SHIELDS made the following

REPORT:

[To accompany bill S. No. 241.]

The Committee on Military Affairs, to whom was referred the memorial of the mayor and common council of the city of Chicago, in reference to a modification of the river and harbor, report:

That such modification is alleged by the city authorities to be essentially necessary to the improvement of the river and harbor; that they ask no aid or assistance from government to make the improvement; that they simply ask permission to cut off a certain portion of an old military reservation which has been long abandoned by the government, in order to widen the river, and make the entrance to the harbor more safe and convenient. The department being consulted by the committee as to the propriety of this permission, give a favorable opinion upon the subject, from which the following is an extract: "No reservation is required at Chicago for military purposes, and only as much of the present reservation as will be required for yard and garden to the marine hospital now erected at that place. The plan proposed by the city would leave for these purposes about $3\frac{5}{10}$ acres." This is the concluding language of a very able report on this subject, from Colonel J. J. Abert, chief of the Topographical Bureau, which is marked A, and made a part of this report. The committee recommend that the prayer of the memorialists be allowed, and report a bill for that purpose.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1852.

Ordered to be printed.

Mr. SHIELDS made the following

R E P O R T :

[To accompany bill S. No. 244.]

The Committee on Military Affairs, to whom were referred the memorial and accompanying papers of the guardian of the heirs of the late Major Thomas Noel, United States army, report :

That in September, 1837, the government determined to accept the services of a regiment of six hundred volunteers from Missouri, to act in Florida. General Atcheason was requested to despatch an officer to muster the troops. He despatched Major Noel to perform this duty, who repaired to Columbia, Missouri, and discharged the duty faithfully. He was also furnished with funds to defray the expenses of the regiment from Columbia to Jefferson Barracks. In performing this service, which was no part of his regular duty, many of the receipts and vouchers received were informal. This is in some measure attributable to his want of experience in this business, and also to the circumstance that he was compelled to remain at Columbia until the last company was despatched, and that the most of the payments had to be made in the mean time at Jefferson Barracks by others. It appears that he was wounded during the campaign, and that this wound was the occasion of his death. His accounts are still unsettled, as many of the vouchers cannot be passed to his credit for want of formality. The accounting officers recommend (and in this the committee concur,) that while the payments were honestly and legally made, but the vouchers received are defective for want of form, the accounting officers be authorized to waive all objections to their informality, and to pass them to his credit as if they were in due form.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1852.

Ordered to be printed.

Mr. BRODHEAD made the following

REPORT:

[To accompany bill S. No. 245.]

The Committee of Claims, to whom was referred the petition of Don B. Juan Domercq, report:

This claim was examined by the Committee of Claims of the last Congress, and a report setting forth the facts of the case was made, accompanied by a bill providing for the payment for so much of the tobacco taken as was not returned to the owner, at the rate of \$24 per bale, but no compensation was allowed in that bill for the use and injury of the eight hundred and twenty-three bales which were returned. This committee adopt that report and bill as far as they go, and are further of opinion that a sum not exceeding one dollar per bale should be paid for the injury occasioned to that which was used for barricades, and subsequently returned; and they report a bill in conformity with these views, and recommend its passage.

IN SENATE—January 28, 1851.

The Committee of Claims, to whom was referred the memorial of Don B. Juan Domercq, report:

That General Worth, commanding the advance of the army under General Scott, entered Puebla, in Mexico, in May, 1847, and, finding a quantity of tobacco stored in that city belonging to the Mexican government, caused it to be seized and sold for the benefit of the United States. The whole quantity, two thousand and eighty-one bales, was accordingly sold at public auction by Major Allen, of the quartermaster's department, to Mr. L. S. Hargous, at ten dollars a bale, amounting to twenty thousand eight hundred and ten dollars. Mr. Hargous paid Major Allen \$5,500 in cash, and the balance in supplies for the army, for which Major Allen has duly accounted.

On the sixth of June following, Mr. Hargous sold the 2,081 bales of tobacco to Don B. Juan Domercq, the claimant, for twenty dollars a bale, amounting to forty-one thousand six hundred and twenty dollars. It appears that thirteen hundred and twenty-five bales of this tobacco were, at

the times of the sales aforesaid, deposited in the quartel (public barracks) of San José, occupied by the American troops, and the remainder in other places in the city.

It appears, also, that two hundred and nineteen bales of the tobacco deposited in other places than the quartel were, some time in August following, deposited by the claimant in house number six, 2d street of San José, near the quarters of Colonel Childs. The thirteen hundred and twenty-five bales and the two hundred and nineteen bales were locked up, and the claimant had the keys.

The claimant alleges—and there is no evidence in the case contradicting his allegation—that the whole quantity of tobacco deposited in each of said places remained there till seized, by order of Colonel Childs, at the time of the siege of Puebla by the guerillas, in September following. At the time of that siege, Colonel Childs, being informed that the tobacco deposited at No. 6, Second street, San José, was Mexican property, ordered it, as well as that deposited in the quartel, which he supposed to belong to the United States, to be taken and used in constructing parapets on the houses, in barricading the streets, and in fortifying the quartel. Colonel Childs makes the following statement on this point:

HEADQUARTERS, DEPARTMENT OF PUEBLA,
Puebla, December 31, 1847.

I certify that, during the siege of Puebla, a quantity of tobacco, the number of bales not known, was taken from a house on the second square from San José, supposed at the time to belong to Mexicans, and a lawful capture; that these bales of tobacco were used as barricades and breast-works in the streets and on the houses; that a great number of bales were taken from San José, supposed to belong to the United States, and placed on the roof of that building, and others taken to complete barricades, &c., &c.; that most, if not all, of this tobacco was exposed for three weeks during the rainy season, and must have been, to a great extent, rendered entirely worthless. For a more particular narrative of the tobacco business, I refer to my testimony before the commission.

THOMAS CHILDS,
Colonel United States Army.

Mr. William Spencer, the agent and interpreter of Captain Webster, testifies that, "after the siege commenced, he was ordered by Colonel Childs to break open the doors of the quartel and house No. 6, Second street of San José, and to use the tobacco in them in constructing breastworks, &c., for the defence of the American troops." "All the bales in both houses were turned out and used during the siege in fortifying the housetops and in barricading the streets." "This was during the rainy season, and some bales were destroyed and spoiled by exposure to the sun and rain. When the siege was over, the tobacco was again deposited in the quartel. That he put locks on the doors of the quartel at three different times, and the doors were as often broken open and tobacco taken out. That American soldiers were frequently confined in the guard-house, under charge for stealing it." Mr. Spencer further states, that "there must have been at least two hundred bales stolen out of the quartel after it was deposited there the second time, and that there were at least twenty bales spoiled by the weather and given to the American troops during the siege."

Soon after the siege, Colonel Childs directed Quartermaster Webster to advertise and sell the tobacco that remained; and five hundred bales were accordingly sold at \$22 a bale, which were again sold by the purchaser for \$24 a bale. Colonel Childs being informed by Doctor Schadler and the Spanish vice-consul of Mr. Domercq's claim to the tobacco, he ordered the sale to be stopped, and that all that remained on hand be delivered to the claimant. Under this order, three hundred and twenty-three bales were delivered to the claimant. Soon afterwards, the five hundred bales which had been sold as above stated were recovered back and delivered to him—making in all eight hundred and twenty-three bales of the one thousand five hundred and forty-four bales originally deposited in the quartel and house No. 6, and leaving a deficiency of seven hundred and twenty-one bales.

The committee are of opinion that the petitioner is entitled to relief for so much of the tobacco, not exceeding seven hundred and twenty-one bales, as was destroyed or lost in consequence of its having been taken and used for purposes of defence by Colonel Childs.

Considerable evidence has been laid before the committee as to the price of tobacco at that time in Puebla. Quite a number of witnesses testify that tobacco was selling about that time from six to seven dollars the arroba. An arroba is one-eighth of a bale, or twenty-five pounds. But no testimony has been laid before them to show the price at wholesale or in large quantities, except the sales above referred to—of Quartermaster Allen to Hargous, at \$10; of Hargous to the claimant, Domercq, at \$20; of Quartermaster Webster, of the 500 bales, at \$22; and of this last purchaser of the same five hundred bales, at \$24 the bale. Now, aside from the fact that the latter are the wholesale auction prices, and the former the jobbers' and retailers' prices, it must be evident that, in the unsettled and dubious state of affairs at that time in Puebla, the price of small quantities of an article like tobacco, for immediate use, might, and probably would, be even double that of large quantities of the same article stored in a besieged city and liable to be seized and destroyed at any moment—and more especially, as in this case, when the article is stored in and about the very point of attack. As \$24 a bale is the highest price which appears from the evidence to have been paid for any large quantity of tobacco at or about that time, the committee think that the price to be allowed per bale should not exceed that sum. In accordance with these views, the committee report the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1852.

Ordered to be printed.

Mr. FOOT made the following

REPORT:

[To accompany bill S. No. 247.]

The Committee on Pensions, to whom was referred the petition of Nancy Bowen, report:

That the petitioner's first husband, Robert Brice, was a seaman on board of the frigate Constitution, and was killed in the action with the English frigate Guerriere. As his widow, she received for ten years a pension of seventy-two dollars per annum, when she became the wife of Aaron Bowen, and her pension ceased by law. Bowen died in 1848, leaving her in a destitute and helpless situation, aged, infirm and childless; and she therefore prays for a renewal of the pension allowed to her previous to her second marriage.

The Committee on Pensions, on the 20th of May, 1850, made a report to the Senate, accompanied by a bill for the relief the petitioner. In concluding that report, the committee say: "Without expressing an opinion upon the subject, the committee have agreed to report a bill for the relief of the petitioner, leaving it to the Senate to sanction or disapprove the principle involved."

The committee deem it proper at this time to state, that after giving the subject due consideration, they entertain the opinion that it is just and proper in cases like this, where the widow has been left in a destitute and helpless condition, to renew the pension; and they herewith report a bill for her relief.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1852.

Ordered to be printed.

Mr. DAWSON made the following

REPORT:

[To accompany bill S. No. 249.]

The Committee on Military Affairs have considered the memorial of Captain L. McLaws, of the United States army, asking the difference of pay of a lieutenant and that of a captain in the staff, the duty of which he performed, and report as follows :

It appears that Captain McLaws, in the month of August, 1849, was detailed, by an order from the headquarters of the 6th military department, for duty with Brevet Colonel John Munroe, major 2d artillery, who was at the time under orders to proceed and assume command of the military department No. 9, which embraced New Mexico and a portion of Texas; that Captain McLaws reported as ordered, and moved with Colonel Munroe for Santa Fe on the 1st September, and arrived there on the 22d of October.

That on the 23d, Colonel Munroe assumed command of the department, relieving Brevet Lieutenant Colonel Washington, major 3d artillery, of that duty, and also of his duties as civil and military governor of New Mexico; and that in this order assuming command, Colonel Munroe appointed Captain McLaws his assistant adjutant general, which duty he performed until Colonel Munroe was relieved by Brevet Colonel Sumner, lieutenant colonel 1st, dragoons, about the 19th July 1851. Captain McLaws, it will be perceived, performed the duties of assistant adjutant general about twenty-two months. Those duties were arduous, owing to the peculiar state of affairs in New Mexico. That during that time he was only in the receipt of the pay of a 1st lieutenant of the line, which was inadequate to his support. It is therefore reasonable and just that for the time specified he should have such additional compensation as would make his pay equal to that of a captain in the staff, the duty of which he performed, as will appear by the following certificate :

"This is to certify that Lieutenant Lafayette McLaws, 7th regiment United States infantry, performed the duty of assistant adjutant general to the 9th military department, from the 23d of October, 1849, to the 19th day of July, 1851, under my orders as commander of said department; that this duty was faithfully and diligently executed; that no other person is entitled to set up any claim or charge therefor, and that the statements mentioned in the memorials are correct. Given at Washington, this 20th of February, 1852."

The committee unanimously report a bill for the relief of Captain L. McLaws, and recommend that it be passed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1852.
Ordered to be printed.

Mr. Foot made the following

R E P O R T :

[To accompany bill S. No. 98.]

The Committee on Pensions, to whom was referred "A bill (S. 98) for the relief of Sarah D. Mackay," report :

That said Sarah D. Mackay is the widow of the late Alexander D. Mackay, a lieutenant in the army, who was killed in the line of his duty while on his way to Florida, by the bursting of the boiler of the transport Dolphin. His widow was placed upon the list of pensioners, and received \$15 per month for five years, her pension terminating on the 17th of December, 1841 ; since which time, being destitute of property, and having no relatives who were able to assist her, she maintained herself by her needle, until, in consequence, as it is supposed, of assiduous application to her work, her vision is destroyed, and her health otherwise has become infirm. From testimony of the most reliable character, the committee are authorized to say, that "had not Providence afflicted her so sorely, she would never have sought further aid from the liberality of the government ;" and deeming her case to be worthy the interposition of Congress, the committee report the bill for her relief, without amendment.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1852.

Ordered to be printed.

Mr. MASON made the following

REPORT:

[To accompany bill S. No. 254.]

The Committee on Foreign Relations, to whom was referred the petition of Lieut. W. D. Porter, of the navy of the United States, praying that he may be reimbursed for expenses incurred by him in bringing to this country Amin Bey, of the Turkish navy, in the year 1850, have had the same under consideration, and respectfully report:

From the petition, and the documents accompanying it, it is shown that Lieut. Porter, then at Genoa, in the command of the United States store-ship "Erie," and about to return home, received a letter from the Hon. George P. Marsh, minister resident of the United States at Constantinople, dated the 20th of May, 1850, requesting Lieut. Porter to receive *Amin Bey* and his attendants on board his ship, and to bring them to the United States; in which letter the minister says that the visit was made on the suggestion of the American Legation, and under the proffer of a free passage for *Amin Bey* and his attendants in any public ship of the United States about to return home; and further, that he doubts not the "Government will reimburse you for any expense to which you may be subjected by affording him a passage."

In compliance with this request, *Amin Bey*, with his attendants, including Mr. John P. Brown as dragoman, were received on board the *Erie* at Genoa on the 5th of July, and landed at New York on the 13th of September, 1850.

The mission was treated as one of sufficient consequence to the United States by our minister at the Turkish Court, to warrant the responsibility he assumed in giving the invitation, and tendering a passage in a public ship; a step fully justified by Congress, in the appropriation subsequently of a large sum of money to defray the expenses of *Amin Bey* while in this country.

The committee are satisfied, from their inquiries, that the peculiar national habits of this guest of the ship *Erie* must have subjected its commander to expenses exceeding those of an ordinary guest, having a like retinue; and although far the larger part of the expenditures made are sustained by vouchers, yet they deem it just to admit some of the charges for which, under the circumstances, strict vouchers could not be obtained. The amount claimed by Lieutenant Porter for his actual expenses thus incurred is the sum of \$1,848 61, and they report a bill for payment thereof.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1852.

Ordered to be printed.

Mr. DOWNS made the following

R E P O R T :

[To accompany bill S. No. 255.]

The Committee on Private Land Claims, to whom was referred the petition of Richard King, make the following report :

The petitioner had two objects, distinct and unconnected, and differing in their nature. First, the petitioner prays that he may be allowed to enter, by way of pre-emption, a certain tract of land adjoining his plantation in the Maison Rouge grant, though his case does not come within the provisions of the act of 1841, granting pre-emption to certain purchasers and settlers on said grant; this the committee are of opinion ought not to be granted, because other persons claim the same land by right of settlement, and also by State location, and it would be incompetent, and unusual, and improper for Congress to interfere in such cases, and accordingly recommend the rejection of this part of the petition.

Secondly, the petitioner prays that his title may be confirmed to a tract of land conveyed to one B. Baily in 1818, for cutting through the Maison Rouge grant a public road, by the person who then claimed the said grant. In Louisiana, by the laws in existence under the former as well as the present State government, owners of land fronting on navigable streams were required to make and keep in repair a public road along the bank of the river. In compliance with this law, the claimant of this grant, which extended some forty miles on both banks of the Ouachita river, employed a man to cut the road, and gave him in payment two tracts of land in this grant, one on each side of the river, of two hundred and forty arpents each, of which the land here claimed was one. The road there cut was through a new, unsettled, and heavily timbered country, in 1814, and has been in use as a public road and mail route ever since mail routes were established in that quarter of the country. The committee are of opinion that under the circumstances the petitioner has an equitable claim to have this small tract confirmed to him, and report a bill accordingly and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1852.

Ordered to be printed.

Mr. MALLORY made the following

REPORT:

[To accompany bill S. No. 256.]

The Committee on Naval Affairs, to whom was referred the resolution of inquiry as to the expediency and propriety of establishing a naval depot at Key West, have had the same under consideration, and thereupon submit the following report:

The policy of establishing a naval depot or rendezvous at any particular position must depend upon a variety and combination of circumstances, such as its proximity to any great branch of passing and unprotected commerce, its susceptibility of defence, the character of its harbor, and the facilities of egress and ingress at all times for naval and merchant ships; and your committee have carefully investigated these and other preliminary considerations, to enable them to form a correct judgment upon the question submitted to it. A glance at the Mexican gulf will show the remarkable position of the island of Key West, with reference to the ports of Florida, Alabama, Louisiana, Texas, the trade of the Panama route and the isthmus of Tehuantepec. This gulf, like the Mediterranean sea, has but one outlet; for, though a passage may, at some particular times, be successfully made through the Yucatan channel to the Caribbean sea, and thence out through the Mona passage to the Windward islands, such a passage is always considered hazardous, if not impracticable, against the violent and opposing winds and currents which sweep over the entire route.

Passages from the gulf, out on the south side of Cuba, are at all seasons tedious and uncertain; but they are deemed by navigators as almost impracticable from January to April, inclusive, and this is the very season when the Mississippi, the great arteries of our commercial capital, and the ports of Florida, Alabama, Louisiana and Texas throw off the cotton crop of the country, and when the immense agricultural wealth of the great West is upon the sea, threading its devious way between the Cuba and Florida shores.

The Gulf of Mexico, in figure, resembles a demijohn upon its side, whose neck is the passage between the Florida Keys and Cuba. This passage is about seventy miles available sea-room wide, and six steamers may at any moment bridge it across and speak each other every thirty minutes. From the regular direction of the prevailing winds and currents along the Florida shore, and from the fact that Cuba is an "iron-bound" coast, navigation

hugs the American side of the gulf; and almost every vessel engaged in the gulf trade necessarily passes within sight of Key West.

In reference to the regular set of the current from the Mississippi, it may be said that a bale of cotton or a stick of timber thrown into the Mississippi at New Orleans, finds its way, in a few days, at or near Key West. From the statistics of the past, it may be properly said that the value of the products, including the shipping which will thus pass this outlet of commerce during the year 1852, cannot be estimated at less than two hundred millions of dollars. This immense aggregate is composed of the products of the southwest and west, and the manufactures and shipping of the middle, northern and eastern States. Our country cannot be successfully invaded; and in the event of hostilities with any of the great powers of Europe, the field of conflict would be the ocean, and no sea upon the globe can ever offer to a maritime enemy so grand a temptation as the Mexican gulf. An enemy would at all times find at least a thousand American vessels, with their immense aggregate of products, in the gulf, seeking the great Atlantic high road of commerce through its only outlet near Key West.

The rich coasting trade between California and the Atlantic cities, and our trade with China, must, before the expiration of many years, take its course across the continent; and there is great room for believing that in less than a quarter of a century, not a chest of tea or a bale of silks will reach us from China by any other route, and all this trade will pass within sight of Key West. The left bank of the Mississippi may be said to extend to the Tortugas and to Key West. These facts speak for themselves, and comment upon the matchless geographical position of this island, and its inevitable connexion with our future naval history, is unnecessary; but they derive peculiar significance and importance from the positions already occupied by the great naval power of the earth, bearing upon this very trade. She has, with that remarkable forecast which has ever distinguished her statesmen, secured almost every important or salient point between the coast of Yucatan and the Orinoco. She occupies every rock and harbor of the Bahamas, where a gun can be mounted or a ship moored; and her military stations, her naval refitting and repairing resorts, extend from Trinidad, through the Caribbean sea and the Windward islands, almost to Cuba; and even at the lone and distant Bermudas, she has a naval rendezvous.

From these numerous sentry boxes, she looks out upon our immense commerce defiling through the Florida straits; and were she possessed of Key West or the Tortugas, with her present naval superiority, the mouth of the Mississippi, for the time being, would be effectually sealed. The importance of holding either of these positions has occupied her deliberations; and in 1819, before the Floridas were transferred to us, Mr. Huskisson, whose mind grasped every subject within the political horizon of his country, called the attention of his government to the remarkable position of the Tortugas, and suggested the policy of taking possession of them as being the Gibraltar of the gulf. The officers of our navy are, it is believed, united in opinion as to the commanding position of Key West, with reference to the gulf. Commodores Porter and Rodgers have both designated it as the most important point on the gulf, and the latter said: "I venture to predict that the first naval conflict in which we shall ever be engaged, will be in the vicinity of this very island."

During the two recent attempts at revolution in Cuba, when American

interests in that island demanded the presence of our naval vessels, they immediately took up their positions at Key West, from whence they had the power of looking into the Havana and Matanzas at any time in a few hours; and this must necessarily become the rendezvous of our navy during all maritime operations affecting the commerce of the gulf, or growing out of any attempts to change the government of Cuba. The employment of a steam navy in this sea, in the event of hostilities with any maritime power, would be indispensable; and as a depot for coal, provisions, and the munitions of war generally, Key West, with its safe and capacious harbor, with a ready access from various and opposite points, would become invaluable.

In 1824, the expediency of establishing a permanent depot at this point was suggested by the then Secretary of the Navy, Mr. Southard; and in speaking of the establishment of the yard at Pensacola, he says: "The character of the station and depot there, (Pensacola,) ought to correspond with the establishment which may be made at Thompson's island (Key West,) or the Tortugas." Extensive fortifications are now being constructed at both these points. That at the Tortugas, immediately opposite the Moro castle, will be a castle eighty feet above tide water, and will stand as the great watch-tower of the Caribbean sea and the Mexican gulf. The work at Key West will completely command the harbor, and mount about one hundred and fifty guns. Thus a naval depot at Key West will be fully protected.

It possesses a mild tropical climate, and for twenty years and more has proved one of the healthiest points of the whole Atlantic seaboard.

In view of all these considerations, your committee recommend that a naval depot be established at Key West, under the direction of the Secretary of the Navy, and that he adopt such measures as will enable the naval forces operating in the Gulf of Mexico to obtain at that point such supplies of coal and other munitions of naval warfare as the exigencies of the naval service and the public interests may demand.

IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1852.

Ordered to be printed.

Mr. ATCHISON made the following

REPORT:

[To accompany bill S. No. 257.]

The Committee on Indian Affairs, to whom was referred the petition of the heirs of Joshua Kennedy, respectfully report:

That they have examined the case with great care, and find the facts to be in exact accordance with the narrative contained in the report of the Committee of Claims of the House of Representatives at the first session of the thirtieth Congress, herewith filed and intended to be made a part hereof. On entering upon the examination of this case, the committee felt a distrust of its justice, occasioned by the length of time during which it had been permitted to remain unsettled, and the fact that a commission had been appointed for the express purpose of deciding upon this and similar claims. The prejudice which had thus arisen soon passed away, however, on a careful examination of the facts as stated in the evidence, particularly when it was ascertained that there had been no *laches* on the part of the petitioner in presenting his claim, which had been left unsettled owing to the shortness of the time for which the commission was appointed, to wit: two years. The destruction for which the petitioners ask indemnity did not take place "while" the troops occupied the property; but there can be no doubt that "such occupation was the cause of its destruction;" so that the case, in the opinion of the committee, comes clearly within the *spirit*, if not the letter, of the act of 1816, and the supplement thereto. If the military occupation be the exciting cause of the destruction, it is difficult to imagine what difference the precise moment at which the destruction took place can make. It is the feeling of hostility, created on the part of the enemy by the act of the government in erecting a source of annoyance in their neighborhood, which makes the government liable for the consequences of its own act, and not the particular time chosen by the enemy to satisfy its vengeance. In the case under consideration, the petitioner had originally erected his buildings and other improvements under the assurance given in the President's proclamation that the persons and property of settlers should be protected. Subsequently these buildings were converted into a temporary fort by an officer of the government, and as such became the point of assault to the Indians immediately after their successful attack on Fort Mimms and the massacre of its garrison. It is

true, the party of troops which had occupied the premises had, in their panic, occasioned by the destruction and slaughter at Fort Mimms, retired; but immediately after that destruction, and whilst the military defences were still in existence, the premises were attacked and destroyed by the enemy.

Your committee, therefore, recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1852.
Ordered to be printed.

Mr. BRODHEAD made the following

R E P O R T :

[To accompany bill S. No. 258.]

The Committee of Claims, to whom was referred the petition of Daniel Winslow, report :

This claim was examined by the Committee of Claims of the last Congress, who made a favorable report thereon, accompanied by a bill ; but it failed, for want of time, to receive the action of the Senate. The committee having again examined the case, concur fully in the report above referred to, and adopt the same as a part of this report.

They recommend the passage of the accompanying bill.

IN SENATE—March 3, 1851.

The Committee of Claims, to whom was referred the petition of Daniel Winslow, in behalf of himself and his sureties, David Winslow and James N. Winslow, report :

The facts in this case are substantially as follows : On the 29th September, 1846, Daniel Winslow as principal and the only party in interest, and David Winslow and James N. Winslow as sureties, entered into contract with the Chief of the Bureau of Provisions and Clothing to deliver at the navy-yard in Charlestown, Massachusetts, 1,800 barrels of navy beef, between the 1st of January and the 15th of June, 1847, at the price of \$7 87½ per barrel.

It appears that the regular business of the said Daniel Winslow and of his father had been that of packing beef for forty years, and that upon an average price of navy beef for twenty-five years next preceding the year 1846, this contract would, upon that basis, have afforded a moderate profit only. That the said Daniel Winslow entered into this contract as a part of his regular business, and not on a speculation. That he had a competent knowledge and acquaintance with the business, and, as far as appears, managed it with ordinary prudence and discretion.

In November, 1845, the year preceding the contract, Winslow was able to pack beef at \$7 per barrel ; but soon after the execution of this contract,

in the fall of 1846, prices began to rise, and in October of that year beef was worth \$8 to \$8 25 per barrel; in December, from \$11 to \$12 per barrel; and in January and February, 1847, it went up to \$13 50, and soon after to \$14 and \$15 per barrel. It is stated that this rapid and unusual advancement of prices was induced by the progress of the Mexican war, and the occurrence of the famine in Ireland, which produced an extraordinary and unlooked for demand for provisions for exportation.

It further appears that Mr. Winslow, with the view of fulfilling his contract, whatever might be the consequences to himself, continued to purchase all the cattle he could obtain, until the actual cost of the beef reached \$12 per barrel, making a loss to the contractor of \$4 12½ upon each barrel, or about 33 per cent. He had not the capital required to enable him to overcome these difficulties, and after having furnished about 350 barrels he failed, and became hopelessly insolvent. In furnishing the residue of the beef embraced in the contract, the United States paid \$8,061 75 more than the contract price—having paid from \$12 94 to \$14 50 per barrel; and for that sum, with costs and interest, judgments have been rendered, by consent of parties, to satisfy which the entire property of the aged father of the contractor, consisting of a small homestead farm, has been set off to the United States. The object of the petition is to relieve this property of the surety, and avoid the necessity of turning an aged and venerable family, chargeable with no fault, houseless and penniless upon the world.

Believing this to be a case of unusual hardship, the committee are anxious to afford relief if it can be done upon safe and equitable principles.

In cases of contracts like the present, the committee are of opinion that the following rules may be safely observed, to wit:

1st. Where the contractor enters into the contract in good faith, with a reasonable assurance, founded on competent knowledge of past and present prices of the article contracted to be furnished, that the contract can be performed by him in strict accordance with its terms; and

2d. Where the rise in prices is such as could not have been foreseen or anticipated by prudent persons acquainted with the business; and

3d. Where the contractor performs his contract in good faith, and with due skill, energy, and diligence, to the extent of his means and ability; that then an equitable case arises for relief.

In this case the government suffered no other loss than the failure to realize the entire profits of a good bargain. The beef which the contractor failed to supply was purchased at its fair market value. The government paid no more than individuals were paying, at the time, for the same article; and the contractor not only did not make a profit on the quantity furnished by him, but, on the contrary, he lost not merely his time and trouble, but a large amount of money, by which he was rendered insolvent. He appears to have used every effort in his power faithfully to fulfil his contract, and was prevented by circumstances wholly beyond his control, and which could not have been foreseen. He does not, however, ask to be remunerated for his losses, but that his sureties, to whom no fault can be attributed, shall be saved from utter ruin, after he has sacrificed his entire property, and from which the government has derived a benefit.

The committee think the case comes clearly within the rules laid down above, and within the principles recognised in the case of the sureties of Peter Yarnall, for whose relief an act was passed in 1844. They therefore recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1852.
Ordered to be printed.

Mr. JAMES made the following

REPORT:

[To accompany bill S. No. 259.]

The Committee on Patents and the Patent Office, to whom was referred the petition of Bancroft Woodcock, report:

That the petitioner prays for a special law, securing and extending a patent issued to him on the 26th day of January, 1832, for "certain improvements in the self-sharpening plough." That further improvements were made by him in said plough, for which, on the 23d day of November, 1836, he obtained a patent. He made further improvements, for which, on the 14th of June, 1837,* he obtained a patent; which patent was cancelled on account of a defective specification, and re-issued on the 23d of November, 1837. He also made further improvements, for which, on the 31st of January, 1845, he obtained another patent; the originals or certified copies of which have been filed with the petition.

The first patent expired on the 26th January, 1846; the second, on the 23d November, 1850; the third, on the 14th June, 1851; and the fourth will expire on the 31st of January, 1859.

It appears that in November, 1845, he applied to the Commissioner of Patents, by petition, for an extension of his patent by the "board," under the eighteenth section of the act of July 4th, 1836, and that said board decided against the extension of the patent.

A copy of his petition to the commissioner (marked V;) the report of the "examiner," dated July 6th, 1846, upon that petition; a copy of his statement of receipts and expenditures, sworn to November 22d, 1845, (VI,) presented with said petition; a copy of the affidavit of William Seibert, (vide V,) and a copy of the affidavit of John Armstrong, (vide V,) assignees of his patent for certain specified districts in the United States, also filed with said petition, all duly certified, are now presented, with his petition, to the Senate.

A certified copy of the decision of the "board," refusing to extend the patent, is also presented, (vide XVII,) together with a certified copy of the drawings of his plough, filed in 1832, at the Patent Office. A statement of profits and losses which have accrued to him in reference to his said invention, similar to that presented to the Commissioner of Patents in 1845, is also filed, and sworn to by the petitioner on the 29th March, 1848.

* Extended 5th June, 1851, by Commissioner of Patents.

The committee would remark, that this case has been three times before the Senate at previous sessions. On the 25th February, 1846, the petition was first presented, and March 3d, 1846, having been referred, it was reported upon favorably by bill S. 105, which was not finally acted on at that session. (See Journal.) On the 14th December, 1846, it was again presented, and February 17th, 1847, a similar bill was again reported, (S. 162,) which also was not acted upon. (See Journal of Senate.)

The petition was again presented and referred, and on the 15th May, 1848, a third report, favorable to the prayer of the petitioner, was made by the committee, and submitted with a bill, S. 264. No final action was had upon it. The committee are of opinion that the case presents ample merits for their favorable action, and that the delay which has attended its final disposition by the Senate heretofore, should in no way interpose an objection to its favorable consideration by that body now. The report of the "examiner," on the application made to the Patent Office under the eighteenth section of the act before cited, supported the petition, as to the fact of the invention containing features of "some novelty;" and the testimony submitted to the committee places the fact beyond doubt as to the *utility* of the invention. In the extension of a patent no greater degree of rigor can be exercised in the inquiry on the points entitling it to a favorable consideration, than the law requires in the first instance, on application for a patent, as to whether a patent should issue.

The only additional questions to be determined in the former case are: has the inventor been adequately remunerated for his time and expenses in originating and perfecting it; and has he used due diligence in introducing his invention into general use?

The *degree* of novelty and utility may not be inquired into, either on application for a patent or for its extension: that it is novel and useful, brings it within the spirit of the act, and gives it full title to consideration, in view of its extension. Of the utility and value of the invention, the testimony adduced has satisfied the committee; and upon this point proofs have been laid before the committee which were not before the board of extension.

It does not appear that there has been any *laches* on the part of Mr. Woodcock in introducing his invention into general use.

So far from that, he has constantly been making valuable improvements and additions to his original patent; and the lack of remuneration has arisen from the well known prejudice, heretofore existing among our agriculturists, against any innovation in implements of husbandry. This prejudice he has been obliged to overcome; and could only do it by illustrating the usefulness of his invention to that class of our citizens.

To accomplish this has cost him not only much time and money, but patient perseverance and constant study to improve upon the value of his original invention. For this purpose, subsequent to the grant of the patent of 1832, he has taken out three other patents, as previously stated, and all more or less depending upon the original patent for substantial merit. It is true, they were improvements upon such original; yet without some of the characteristic features of that original, the last patent, as a whole and perfect plough, would not present the entire and essential completeness of so important an invention. For this reason, and the fact of the difficulty of disconnecting these four patents, appears the propriety of extending the whole, so that they shall all expire at the end of the extended term.

As illustrative of the difficulties attending the introduction into general

use of this species of invention, the committee would refer to the sworn statement filed by the petitioner before the board, and also before the committee.

The petitioner states on oath that he has received \$1,200 for the sale of his rights for counties and townships; and by sales of his ploughs, (say from 900 to 1200,) at \$1 patent fee advanced, charged on each, about \$1,200; thus making his receipts in all \$2,400.

The cost of obtaining his patent is stated at \$85; his actual travelling expenses in selling rights have been \$392; and he estimates his time and actual expenditures for patterns and experimental trials, for three years *prior to his getting his patent*, at \$666 per annum, or in the whole \$2,000; making his entire expenditures \$2,477, and *exceeding* his receipts \$77.

This, too, it will be borne in mind, without reference to the expenses incurred by his unsuccessful application to the "board of extension," and his repeated attendance before Congress to prefer his petition, or his time, labor, &c., bestowed since 1832.

Deeming, therefore, that the invention in ploughs, as patented by Mr. Woodcock, is not only novel, but useful and valuable to the public, and that, with due diligence on his part, he has failed to receive an adequate remuneration for his time and expenses in originating and perfecting it, the committee report in favor of the extension.

IN THE SENATE OF THE UNITED STATES.

MARCH 4, 1852.

Ordered to be printed.

Mr. WALKER made the following

REPORT:

[To accompany bill S. No. 266.]

The Committee on Revolutionary Claims, of the Senate, to whom was referred the petition of Frederick Vincent, administrator of James Le Caze, surviving partner of the mercantile house of Le Caze & Mallet, respectfully report to the Senate:

That the claim of Le Caze & Mullet arose for advances made by them to the United States during the revolutionary war. The balance due to them was settled and adjusted by the Superintendent of Finance, (Robert Morris,) at \$4,890 83, on July 1, 1784.

This debt was duly registered in the books of the treasury of the United States under the old Confederation, and was duly transferred and registered in the books of the treasury of the United States, under the constitution, according to the provision of the sixth article, that "all debts contracted and engagements entered into before the adoption of this constitution shall be as valid against the United States under this constitution as under the Confederation."

The documents accompanying the petition, certified from the treasury, show that this is a debt of the highest moral obligation, for advances and supplies during the revolutionary war, recommended by the Superintendent of Finance, as deserving the special notice of Congress.

The same books of the treasury which contain the evidence and amount of the claim as liquidated, also bear witness that it is yet outstanding and unpaid; or if it had been paid, the books of the treasury would have contained the evidence of when and to whom paid, as in other like cases of registered debts of the United States.

Why this debt has not been paid, and why the delay in making application for payment, are matters fully explained by the testimony accompanying the petition, and by the emptiness of the public treasury at the close of the war and at the adoption of the federal constitution.

The act of 4th August, 1790, (1 Statutes at Large, by Peters, p. 138,) making provision for the payment of the United States debt, acknowledged the inability of the United States to pay principal or the interest then in arrear, and proposed a loan of \$12,000,000, also a subscription of the domestic debt of the United States to the loan.

Before this act passed, the surviving partner, Le Caze, then residing in Philadelphia, made a visit to his plantation in the island of St. Domingo,

and was there massacred in the insurrection of the negroes, which first broke out in the year 1789. The family of said James Le Caze, escaped from that island in the year 1793, during the second insurrection of the negroes, and settled in Norfolk, in the State of Virginia.

No person took out letters of administration on the estate of the surviving partner, Le Caze, until December 20, 1844, as appears by the certificate of the register of Philadelphia, and the certified copy of the letter of administration granted then to the petitioner, Frederick Vincent.

So it appears, from the death of the surviving partner, Le Caze, in 1789, until December 20, 1844, there was no person authorized to demand and receive, and give an acquittance to the United States for this registered debt; which circumstances corroborate the books of the treasury, in proving negatively that this debt has never been paid, because there was no person to whom payment could have been made, until the relative, Frederick Vincent, took out letters of administration in 1844. His applications for payment have hitherto proved unsuccessful at the treasury of the United States, and he has been referred to Congress for relief.

That the petitioner is entitled to interest, will appear by the resolution of Congress, of July 3, 1784:

“That an interest of six per cent. per annum shall be allowed to all creditors of the United States, for supplies furnished or services done from the time that payment became due.” (Journals of old Congress, vol. 4, p. 443.)

In addition to this, there are numerous precedents wherein the Congress, in similar cases, have granted relief by ordering payments of principal and interest in like manner as if the said outstanding debts of the United States, contracted during the revolutionary war, had been subscribed to the loan under the act of August 4, 1790, before cited. Of these precedents of acts for relief of persons in like cases very many are cited by the petitioner, with reference to the times of their passage, the persons in whose favor passed, and the pages in the fourth volume of the Statutes at Large (by Peters) where those acts may be found.

Your committee are unanimously of opinion that the claim is justly due and ought to be paid, and report a bill herewith to that effect.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1852.

Submitted and ordered to printed.

MARCH 9, 1852.

Ordered that 2,000 additional copies be printed.

Mr. HUNTER made the following

REPORT:

[To accompany bill S. No. 271.]

The Committee on Finance, to whom was referred the report of the Secretary of the Treasury, have considered so much of the same as relates to a change in the coinage, and respectfully submit the following views:

The subject is one of great importance and much difficulty, for it involves more or less all the questions connected with the metallic currency of the country. On the one hand we have seen the rapid disappearance of our silver currency, and the certain consequence of that loss, a flood of small bank notes; and on the other we have the natural, and to some extent the well-founded, apprehensions as to the danger of tampering at all with the standard of value. Among those even who believe that there is a necessity for some legislation on the subject of our coinage, there is a difference as to the precise measure to be adopted. Some are of opinion that only one of the precious metals should be used as the legal standard; and these, again, differ as to which shall be selected. Others think that the double standard should be preserved, but recommend a different legal ratio to be established between the two metals, according as the silver coins are large or small. These views have all been examined by the committee, as far as their time and means of information permitted. And first, as to the danger of accommodating the legal standard to the increasing quantity of gold, which many seem to think may swell the volume of currency so rapidly as to disturb not only all the settlements of property made for long periods of time, but to affect seriously all the pecuniary transactions of society. To ascertain what may be the probable effect of the additions to the stock of precious metals in the world, which have been made so rapidly of late, it will be necessary to see in what manner and to what extent their capacities as a standard of value have been affected by changes which have been made in their relative proportions to the property of the world.

If there were no other money but gold and silver, and if contracts were made, not according to arbitrary values assigned by legislation to given portions of them, but were measured by certain weights of fine gold or silver, then these metals would fluctuate precisely according to natural laws; that is to say, according to the proportion which they bore to the residue of the property of the world. A contract might be measured in specie by a law

of its own; that is to say, it might specify that it was to be paid in such a weight of gold or in such a weight of silver, and this arbitrary rule might differ a little from its real value as bullion; but in the general, the great mass of transactions would be measured in these metals nearly according to their true bullion value; that is to say, their currency and their bullion values would correspond. If the stock of bullion in the world increased in the same ratio with the property of the world, the standard of value would be invariable; if more slowly, it would appreciate; if more rapidly, it would depreciate. But still the natural laws of trade would lead to constant efforts to produce an equilibrium: if they grew dearer, more of these metals would be raised; if cheaper, less labor would be employed in producing them; and although there might be periods when the true equilibrium could not be preserved, still the tendency would be that way. At any rate, the relative values of the two metals, gold and silver, would be regulated by the laws of trade, and contracts would be measured by those metals within a reasonable degree of approximation to the true proportions. If now, however, the governments of the world should interfere and enact that a certain quantity (say fifteen ounces) of silver should be equal to one of gold, it would become more difficult to trace the laws which would then regulate the compound standard. These metals derive their value from two distinct sources—one from their use as a currency, the other from their application to manufacturing purposes. The demand for them as currency in any given year is to be measured by the number and amount of exchanges to be made in specie during that year—their value for mechanical uses is their bullion value; that is to say, it is measured by their proportion to the residue of the property of the world, for the demand for them in the arts will be very nearly in proportion to the wealth of society. When this regulation of law takes effect, these two values may differ by sensible limits. If, in the instance cited, any extraordinary cause should increase the relative supply of gold, then the bullion value of fifteen ounces of silver would be greater than one ounce of gold. The demand for the precious metals to be used in the arts would play upon the silver, and it would be directed to such purposes until the decrease of currency and the increase of plate had again equalized the currency and the bullion values. But in such a case it would be clear that this artificial regulation had prevented the currency of the world from increasing with the supplies up to the natural rate of bullion, and had forced some of it into manufactures which otherwise would have gone into coin.

The great point of preserving a precise equality between the bullion and currency values of the precious metals would now, to some extent, be lost. Still the deviations might not be enough to lead to very serious consequences. It will still simplify the inquiry beyond the real state of the case if we continue to suppose that gold and silver are the only money of the world. But to approach still nearer to the real state of things, we now take the case of a difference in the ratio of gold to silver, as established in different countries. Instead of a common legal proportion of fifteen to one, we will now suppose that some nations adopt that ratio—others, that of fourteen to one—and that others, again, use only one metal as a standard, some preferring silver and others gold; and here, again, we will suppose an extraordinary increase in the supply of gold; the bullion price of silver now rises to fourteen to one: how will these different countries be affected? As a currency, silver will leave that in which its ratio is fixed to fifteen to

one of gold, and gold will there replace it; it will still be seen as a currency where its legal rate is fourteen to one, and it will be used as bullion every where until the increased quantities bring down its bullion to its currency-value, taking the world together. But how will the first country be affected? It will purchase the gold to replace the silver, at a loss; that is to say, it will not get gold enough in exchange for its silver; and it must be remembered that this loss is sustained on far the largest value which it had invested in coin, because, where both circulate freely, the silver probably appears in so much greater quantities as to be more valuable. It seems that for fifty years, from 1750 to 1800, (see Doc. No. 117, p. 50, 1st sess. 21st Cong.) the quantity of silver raised was to that of gold as *forty to one*; and yet, during that period, the value of gold was not more than fifteen times as great as that of silver. As a further proof of the greater quantity of coined silver, we find that the value of the silver, as compared with gold coin, was, in France, from 1803 to 1840, nearly as three to four; and in the United States, from 1793 to 1841, was nearly as two to one; and in Great Britain, where gold was the exclusive legal standard, silver being used only for the smaller transactions of trade, the proportion of silver was more than one to six. So that there can be little doubt of the large excess in value of the silver coin, as compared with gold. (See table A.) Indeed, it appears from a carefully compiled table, appended to Mr. Ingham's report, (Doc. No. 117, p. 101,) that, from 1492 to 1825, there were coined from the American mines \$4,310,000,000 in silver, and only \$1,890,000,000 in gold. But, in tracing the effect of this change of the relative value upon particular countries, we must not forget its operation upon the rest of the world. In thus excluding one of these metals from one country, if its property and trade were large, and in thus forcing more than its natural proportion into manufactures, we should diminish the volume of specie currency of the world below the natural supply. How this would affect mankind will be hereafter examined. But the mischief would be great indeed if all the world were to adopt but one of the precious metals as the standard of value. To adopt gold alone, would diminish the specie currency more than one-half; and the reduction the other way, should silver be taken as the only standard, would be large enough to prove highly disastrous to the human race. Indeed, a reference to the history of the precious metals, and the general course of human production, can scarcely fail to convince us that there has been a constant tendency to appreciate their value, as compared with the residue of the property of the world, and that every extraordinary increase of the supply of the precious metals, of which we have any account, has exercised a highly beneficial effect upon human affairs. When contracts are made by a standard which is gradually contracting, the advantages are on the side of capital, as against labor, and productive energy is cramped by receiving less than a fair share of the profit of its enterprises. Before the invention of substitutes for payments in coin, and before the increased supply of specie from the discovery of America, human history is full of the strifes between debtor and creditor, and human legislation is rife with experiments to limit the encroaching and engrossing power of capital.

The most ancient legislation of which we have authentic accounts, extinguished all debts in every seventh year. Interest was often prohibited, and generally regarded with abhorrence; for although the reason was not perceived, yet the fact was felt, that capital received profit enough for its sue

in the appreciation of the standard of value. Up to a recent period, the debasement of coin has been practised in all countries. The English pound, which in the days of William the Conqueror contained a pound weight of silver, contains now 3oz. 12dwt. 16gr. The French livre, whose original weight would now be worth \$18 16, is so reduced as to be worth only 18⁴⁷/₁₀₀ cents. Such are the effects which would have naturally flowed from a constant tendency towards contraction in the standard of value upon which contracts were based. The attempts which were made to relieve these evils were unskilful, and often mischievous; but these expedients were sometimes called for by the necessities of the times, and were the evidences, if not the remedies, for mischiefs actually endured. To have prevented the contraction of the specie standard of value, it was necessary that the precious metals should have increased as fast as the residue of the property of the world; but we know that before the discovery of America, the annual supply of the precious metals was very small, whilst it is notorious that capital and property accumulate rapidly in times of profound peace. That this must be so, becomes still more evident when we trace the history of the precious metals since the discovery of America, and during a period when we have better means for ascertaining facts in relation to the relative progress of specie and property. That capital has increased with great rapidity, even in the last two centuries, although there were long periods of wasteful warfare in both, there is abundant evidence. Since the time of William of Orange, capital in Great Britain, and perhaps in Europe generally, must have doubled; for the rate of interest, notwithstanding the increasing demand for capital from increasing population, has diminished nearly one-half. The legal rate of interest in England during that reign was *eight* per cent., and money may now be borrowed for one-half of that rate, or less. The immense impulse which has been given by discoveries to the productive power, not only of man, but of material agencies, has increased vastly the property of the world. But for the last century the increase of the precious metals has been comparatively slow. The amount produced annually cannot be accurately ascertained for any period of time, but a statement made by Brogniart of the production of the precious metals (see Doc. No. 117, p. 99,) from 1790 to 1802, places it at \$45,585,241. The entire production from the mines of America from 1492 to 1825, (see same Doc., p. 101,) according to a table compiled from the statements of Humboldt and Ward, amount to \$6,200,000,000. The quantity existing in the world at the time of the discovery of America, and that added from other sources since that period, are to a great degree conjectural, but it is probably not under \$8,000,000,000. (See table E.) Now if \$45,500,000 be taken as the average annual product during the last century—and doubtless until within the last ten years this estimate is sufficiently large—and if we deduct for the annual abrasion and waste \$10,000,000, (and Humboldt computes for the waste in plate alone in Europe, \$4,500,000—see same Doc., p. 70,) then the average annual addition to the stock of specie was not quite one-half of one per cent. Indeed this addition is probably over-estimated here, for Mr. Gallatin estimated the annual supply from 1809 to 1829, at \$18,000,000 in silver, and \$9,000,000 in gold, making but \$27,000,000 in all. Who can suppose but that property has increased at a far more rapid rate? Population has certainly increased at a much more rapid rate than one-half per cent. annually, (see table F,) and we shall hereafter show that the property of the world has grown faster than its population. In

1846, the ascertained public debt of Europe alone was \$8,170,345,607, (see Statistical Companion, by Banfield and Weld, pages 23 and 24 ;) and all must admit that this constitutes but a small portion of the capital in those countries, even if we apply the term only to those products in which labor enters as an element. When we consider how small a portion of the capital of the world is invested in public debt, we may form some conjecture as to the vast amount of commodities which measure the value of the specie of the world. That this stock is increasing much faster than that of the precious metals, is also highly probable. If, notwithstanding the increased demand for capital which an increased population produces, there is a fall in the rate of interest, there is reason to presume that the increase of capital is faster than that of population; that is to say, unless extraordinary circumstances have occurred to produce a greater relative waste, either of population or capital. But the period between 1800 and 1850 has not been marked by such circumstances. From 1801 to 1841, the population of Great Britain has increased from 10,942,646 to 18,720,394; and in the United States, from 1800 to 1850, the population has increased from 5,305,925 to 23,091,488; but during this period the rate of interest has greatly diminished. Now if capital had increased precisely in the same ratio with population, the interest would have been about the same now as in 1800; but this last having diminished, we have in that fact a proof that capital has increased faster than population.

If, then, we had possessed no currency but specie, and if our stock is about what has been estimated, it would have required a much larger annual supply of specie to have maintained the standard of value now as it was in 1800. But instead of that, the relative excess of property has been constantly increasing. How, then, can we fear that any supplies of the precious metals likely to be derived from California, or any mines now known, can affect injuriously the standard of value? The probable amount of specie raised annually does not now exceed \$150,000,000, (see table B,) which is a sum far below what would be necessary to keep up an invariable relation between the specie and the constantly increasing property of the world.

The effect of this contraction of the specie standard has been palliated by reductions in the amount of fine metal which was contained in coins of a given denomination. Less gold and silver were made from time to time to represent the same values; and although this made up to some extent for deficiencies in the production of the precious metals, yet its operation upon existing contracts, and especially those which required a long time for their fulfilment, must have had a depressing effect upon enterprise and production. The best matured schemes for profitable adventure might thus disappoint expectation, not because the calculation, so far as founded upon known data, was imperfect, but because of a contraction in the standard of value. What could be better calculated to discourage enterprise or depress the spring of human production? How much of the depression of commerce, during the middle ages, arose from the decline of prices consequent upon a diminution of the stock of precious metals, has probably never been sufficiently estimated. And yet a comparison between the deep decline of all the great interests connected with commerce and human industry during that period, and the wonderful impulse given to all sorts of productive enterprise after the discovery of the American mines, must suggest the effects which the existing state of the standard of value produced during the two

periods. But it may be asked why it is that this contraction of the standard of value has not been more seriously felt in modern times, if, in truth, the relative additions made to the stock of specie and property of the world were much larger in the latter than in the former case. If all the pecuniary transactions of society had been settled in currency, and there had been no currency but specie, there is reason to believe that the present state of things would give unmistakable evidences of the effects of a contraction of the currency upon our enterprise and industry. But since the general use of bills of exchange, currency has not constituted the only means of settling pecuniary transactions; and since the middle of the seventeenth century, when banks began to be felt in commercial affairs, specie has not constituted the only currency of the world; but this last has been so largely composed of paper, that we cannot omit its consideration in any question connected with our standard of value. Perhaps no discovery in the whole machinery of commerce has been more important to the world than that of the bill of exchange; none which saved so much labor in its processes; none which was so efficient in keeping up some approximation between the real and the money standards of value of the world. Accounts which formerly required a long, expensive, and hazardous transportation of the precious metals, began now to be settled by offsets, or an exchange of balances mutually due by distant bankers; and thus a mere transfer of entries upon their respective books, often saved the expense and the risk of the actual transportation of specie. The great facilities thus afforded, doubtless suggested the idea of the first banks which were established. The banks of Venice and Amsterdam were founded merely for purposes of exchange. A bank note was a certificate of a deposit of coin, or bullion, or an open letter of credit to that amount on the books of the bank. A credit thus established in the Bank of Amsterdam, when that city was one of the great centres of commerce, became more valuable sometimes to a London merchant, than the same amount in specie at home, because with it he could pay a debt in France or Italy, and save the expense and risk of transporting his money. It was not surprising, therefore, that such a bill should be worth more than the specie which it represented. To estimate the amount of pecuniary transactions settled at home and abroad by this system of exchange or offset, would be plainly impossible. But some idea may be formed of the vast extent to which it diminishes the demand for currency, if we consider the profit which a small part of this business pays, the number of persons whom it supports, and the immense amount of such transactions which individuals perform for themselves, since the machinery of commerce has improved so much, and steam and telegraphs have increased so greatly the facilities for intercourse and correspondence. But this is not the only mode in which paper has diminished the demand for the precious metals. Not only did the wholesome operations of the system of exchange dispense with the use of specie to a great extent, but another contrivance was made which is of more doubtful utility. The value of a paper founded upon an actual deposit of specie, suggested the idea of one based upon the supposed capacity of the maker to redeem it in specie whenever it was demanded. Governments lent their aid to this attempt to substitute a promise to pay coin, for coin itself. A demand was created for it by receiving it for loans, and taxes, and currency, contracted and expanded, not according to the specie standard, but according to the demands for credit, and under laws often differing very widely from those which should

regulate currency. The notes representing specie deposits, and used to transfer and offset the balances of trade, had performed a highly useful function, and had interfered with the specie standard of value in no other way than by economizing its use, and in enabling less to discharge the office of payments. If there was a tendency to a contraction of the specie standard, the business of exchange became more active, and thus contributed to keep to a proper level the currency value of the precious metals. If, on the other hand, there had been a tendency to an expansion of the specie medium, which has not existed since about the middle of the sixteenth century, the bullion value of the precious metals would rise, and thus tend to preserve the true standard. But when banks undertook to carry on the business of exchange or offset by paper which represented neither deposits of specie nor actual balances of trade, but which undertook to find either the specie or the bills, founded upon real balances, whenever they were required at a certain place, the whole subject passed from the regulation of the natural laws of trade, and was placed under the management of artificial and empirical rules, which, however ingeniously conceived and skilfully administered, have had the effect to derange often the whole system of exchanges and of commerce in the world. As this paper took the place of specie, the currency value of the precious metals diminished, large amounts were driven into the uses of manufacture, which ought to have been employed as currency, and the great law of nature was thus suspended for a time, which, by increasing the value of specie, would have directed more labor to producing it. If, then, specie enough could be furnished to perform all the offices of circulation, and to banish all paper from the uses of currency, except such as was founded upon an exchange of real values, consisting either in specie or actual balances arising in the operations of trade, who could doubt the beneficial results from such a state of things? The vibrations between the greatest possible contractions and expansions of such a currency, for the period which would embrace the transactions of a generation, would never be such as to produce a tithe of the calamities to which a paper currency has so often exposed us; and commerce would be secured from a source of risk vastly more prolific and dangerous than all those against which insurance offices undertake to provide.

If the preceding views are correct, there is no just cause to apprehend any dangerous expansion of the currency from the increase of the precious metals. The annual production of gold and silver probably does not exceed \$150,000,000; but the interest upon the public debt of Europe alone, at 4 per cent. per annum, would amount to \$326,813,824, and the annual production of the United States is probably at least four times that sum. Indeed there is reason to believe that the value of the property of the world is increasing faster than that of the precious metals, even with the new sources of supply to the latter. Now there can be no danger of an undue expansion of specie currency until the stock is increased beyond the point of which we are speaking, and up to that point such an increase would prove an unmixed blessing. Indeed, no increase of specie can produce an expansion if we should have none but a specie currency until there is enough to take the place of the paper money afloat. In the United States alone the bank notes in circulation in 1850, according to a report from the Secretary of the Treasury, which included returns only from a portion of the banks, amounted to \$131,366,526, and this constitutes but a small part of the paper money of the world. But would any possible increase of the precious

metals supersede paper money, and leave nothing in circulation but the paper of exchange? Unless governments interfered, such might be the effect of a sufficiently large increase of the precious metals. The expense of issuing promises to pay in specie—or, in other words, of issuing bank notes in the usual form—is not measured only, as sometimes asserted, by the value of the paper and printing, but is another form of the great business of exchange, by which banks or persons undertake to transfer and offset the actual balances of trade by means of credit instead of money. When specie is scarce and dear, this business is profitable; but as the former becomes plentiful and cheap, the profits of the latter decline, and dealers will not pay for a promise to furnish specie in a mode which involves a chance of failure, when it is so abundant that they may readily obtain bills drawn upon actual deposits.

The probability is, that the whole amount of the precious metals raised annually, after deducting the quantity lost to the stock of the world by abrasion and other causes, does not amount to the bank note circulation in the United States alone. In 1803 Humboldt estimated the annual loss on plate in Europe alone, from abrasion and other causes, at \$4,500,000. The loss on coin by abrasion was estimated by Lord Liverpool at one per cent. on the guinea, and two per cent. on half-guineas, for fifty years: and in eleven years one-fifth of one per cent. on crowns, $1\frac{1}{2}$ per cent. on half-crowns, upwards of five per cent. on shillings, and $3\frac{1}{2}$ per cent. on sixpences. Some idea may thus be formed of the annual wear of the precious metals, which is to be subtracted from the \$150,000,000 which are probably raised in the year. Upon a review of all the considerations which affect the questions submitted to us, there would seem to be no danger from an undue expansion of the standard of value, if we bring into active use both of the precious metals, and if the annual supplies of both were to increase beyond their present annual measure. It is true that none but a calculation of approximation can be made upon this subject. The data are too complicated and uncertain to enable us to make an exact estimate of the values of the specie or of the property of the world. But since the middle of the seventeenth century there is great reason to believe that the value of the specie standard has contracted, and there are some grounds for supposing that in the United States this tendency has not been corrected even by the production of gold in California. The summer of 1851 witnessed a severe pressure in the money market in New York; and an exhibit of the banks of the State of Massachusetts for the year 1851, shows that the proportion of their liabilities for circulation and deposits was to their specie as 13.17 $\frac{1}{10}$ to 1, which is a far greater proportion than was ever known in that State from 1815 to 1851, with the exception of the two years of 1835 and 1836. (See Hunt's Merchants' Magazine of February, 1852, p. 222.)

This state of things was probably brought about, in part, by the appreciation of silver beyond the mint price under our law. The silver coin left us, and stimulated importations from the places where it went. Gold did not immediately replace it in circulation; indeed, for the purposes of small change, it could not; and the banks were thus tempted to issue notes to supply the vacancy in the currency. Had the market and mint prices of silver corresponded in the United States, we should probably have seen nothing of all this. Although it is possible that the first effects of a large influx of specie might be an increase of bank paper, yet this is an evil which the laws of trade would soon correct. Should, however, the present state

of things continue in relation to silver, we shall not only lose the advantages of the more abundant of the precious metals, for the purposes of a standard, but we must lose the specie standard entirely in the smaller exchanges of society. It is doubtful whether the dollar gold piece can maintain its place in circulation; and smaller values in that metal can hardly be used for coins. This vacuum must then be supplied by bank notes of the very worst kind, the notes of smaller denominations. So much is the value of currency affected by the facility with which it may be counted, and its convenience of transportation, that there will always be difficulty in supplying the place of small notes with any thing but silver, or that of large notes with any thing but gold. We require, then, for this reason, the double standard of gold and silver; but, above all, do we require both, to counteract the tendency of the specie standard to contract, under the vast increase of the value of the property of the world. And what harm can arise from any probable increase of the precious metals, if both are allowed to swell the volume of currency? On the contrary, a more beneficial event for the trade, the industry, the moral and political condition of the world, could scarcely be imagined. Of all the great effects produced upon human society by the discovery of America, there were probably none so marked as those brought about by the great influx of the precious metals from the New World to the Old. European industry had been declining under the decreasing stock of precious metals and an appreciating standard of value, human ingenuity grew dull under the paralyzing influences of declining profits, and capital absorbed nearly all that should have been divided between it and labor. But an increase of the precious metals, in such quantities as to check this tendency, operated as a new motive power to the machinery of commerce. Production was stimulated by finding the advantages of a change in the standard upon its side. Instead of being repressed, by having to pay more than it had stipulated for the use of capital, it was stimulated by paying less. Capital, too, was benefited, for new demands were created for it by the new uses which a general movement in industrial pursuits had developed; so that if it lost a little by a change in the standard, it gained much more in the greater demand for its use, which added to its capacities for re-production, and to its real value. Property which had been acquired by the strong arm, and accumulated in violation of the great laws of equity and trade, by an almost insensible transition, was distributed more equally in society. Nature, under the operation of this its great bankrupt law, as if by an invisible hand, loosened the bonds of the debtor, which heretofore time had continually tightened, and distributed to labor, for purposes of re-production and upon equitable terms, capital which distrust and apathy had either locked up or administered with a too sparing hand. New influences arose in society, and a new impulse was given to its movements. In the present stage of the world we may, perhaps, no more expect any event to produce such rapid transformations in society. But we might reasonably look for something like the same consequences from a similar event. Any system, either of violence or law, which distributes property improperly and unjustly, and which gives a false direction to the great stream of productive industry, will, in the end, produce throes and convulsions in the bosom of society. Unless human skill, such as is rarely if ever known, intervenes to give a true direction to affairs, or unless nature interferes, through the silent operation of her laws, to remove inequalities and repair injustice, violence is almost sure to be used to make a change if it

cannot apply a remedy. The recent discovery of vast auriferous deposits on the globe, would seem to mark the approach of one of those great eras in human affairs when the hand of nature is more obvious than that of man in producing changes. But, be this as it may, we may safely act upon conclusions to which we are led, either by a practical or theoretic view of the question; and your committee are not prepared to go further than to provide for a want which experience has demonstrated to exist. They are disposed to adopt nearly the recommendations of the Secretary of the Treasury, and to leave, for a future day, whatever provisions time and experience may prove to be necessary.

To afford the country the benefit, to some extent, of both metals as a standard of value, it is proposed to diminish the quantity of silver in the half-dollar, and coins of smaller denomination, by about 6.91 per cent. The British government have adopted a still greater seignorage, and their experience seems to have proved the efficiency of this measure for furnishing metallic coins in sufficient quantities for the smaller transactions of society. But, if not made a legal tender—and it is not made so in Great Britain, except for small sums—it can only circulate for such purposes. To make it a legal tender at such rates, rates beyond its bullion-value, would debase the standard and expel the gold. To secure the use of a silver coin, in place of small notes, for the minor transactions of commerce, it is proposed to make this coin a legal tender for sums not exceeding five dollars, and to receive it in payment of public dues. This, however, does not secure the full benefit of the use of silver as a currency, unless we were to adjust its legal value to that which it bears in the market; but as no relation between the market values of the two metals has so developed itself as to promise to be permanent, it might be dangerous to attempt at present to disturb the existing law. Whenever the relation between the market and mint values of gold and silver shall promise a reasonable degree of stability, there can be little doubt but that there should be a re-adjustment of the mint-values of these metals. In the mean time, however, the course of our commerce, and the convenience of exchange, would seem to require some new provisions in relation to bullion. Gold has become an article of export—movements of the precious metals from one country to another are now more frequent and active, and these are regulated by the value of the metals, not as coin, but as bullion. For all such purposes it would be a convenience to trade, and a saving of the expense of coinage to government, if the bullion were cast into bars, either of fine metal or of standard fineness, at the option of the depositor, for a moderate compensation. Foreign exchanges are measured in the precious metals by weight: the custom of commerce may, perhaps, establish hereafter a like measure in domestic transactions; and should that ever be done, the legal regulation of this difficult subject will be somewhat simplified.

In adopting a diminution of the amount of standard silver to the extent recommended by the Secretary of the Treasury, your committee have acted not without doubt. So great a diminution in the amount of silver will undoubtedly preserve a supply of coin for the smaller transactions of society; but if it approached more nearly the true bullion value, the silver coin would be much more efficient as a general circulating medium. Indeed, the American coins of a less denomination than a quarter of a dollar would probably be retained in this country, even with their present amount of silver. The expense of coining a given value of silver into the smaller coins

is much greater than into the large; and when coined, the great demand for them gives them a higher currency value than that assigned by law. As a proof of this, the demand for silver for exportation has not operated as yet upon these smaller coins—that is to say, the dime and half-dime, (the quarter, too, has been partially exempted)—whilst it has swept the silver dollar and half-dollar from the country. A greater diminution of the amount of silver is therefore required in the half-dollar, if the object be to save it from exportation, because the mere coinage does not add so much to its value. But still it is desirable to adjust the quantity of silver in the half-dollar as nearly as may be to its bullion value, as compared with the mint price of gold, if this can be made compatible with the object of retaining these coins in the country. The Secretary of the Treasury, in his annual report, has estimated the difference between the mint price of gold and its bullion value, at nearly *two* per cent. Some gentlemen, of large experience and practical knowledge of this subject, in New York, have been consulted, and the difference has been valued from $2\frac{1}{4}$ to $3\frac{1}{2}$ per cent. The director of the mint places it at 3 per cent. If, then, the cost of coining silver is $1\frac{1}{2}$ per cent., the amount charged at the French mint, and if that be something near the additional value given by coinage, the half-dollar and pieces of a less denomination would probably be used as a currency under the natural demands of commerce, even when silver bore not more than $3\frac{1}{2}$ per cent. premium; that is to say, if these pieces cease to be coined, as the accompanying bill proposes, for anybody except the government, which would limit the supply by the demand for currency. But should this premium continue to advance, the half-dollar would not be exported until the premium covered the 5 per cent. over its present legal value, the additional value given it by its character as a coin here, and the expense of transportation rated, from New York to Liverpool, at about $\frac{2}{3}$ per cent. for large coin. The probability, therefore, is, that with a reduction of only 5 per cent. in the amount of silver, this coin would not be exported. With this reduction, silver in the smaller coins would bear to gold a ratio of nearly 15.238 to 1, which gives it a greater value than the existing laws of Russia, Holland, and France, in which it bears to gold the respective values of 15.333 to 1, of 15.5 to 1, and of 15.5 to 1. In England it bears a higher value; but there it is used only for tokens, and is not a legal standard except for small sums. The expense of exporting small coins abroad is far greater than, that of exporting bullion or coins of large value. The gold coin exported from this country has consisted principally of the double-eagle; and experience has shown that at a premium of $3\frac{1}{2}$ per cent., the dime was not exported, owing to the increased value given it by its character of currency and to the greater expense of exportation. This remark applies, of course, to the new dime, and not those which are worn. If it was deemed expedient to use silver only as a token, then it would be safer to adopt a greater measure of diminution than that recommended by the Secretary of the Treasury, so as to accomplish the object with greater certainty. But if it is thought expedient to preserve the double standard, and to readjust it when the relations between the two metals promise to be more permanent, then it is desirable to make no greater deviations from the true value of silver than may be necessary to accomplish the object of retaining a specie currency for small transactions. That this object might be accomplished with a less reduction of the quantity of silver than is now proposed, there is some reason to believe. There is a natural tendency in the two metals

to find a stable relation between their values, which continues, if not from age to age, at least for many years. Thus Mr. Moore, (see Doc. 117, before mentioned, page 50,) an officer of the United States mint, consulted by Mr. Ingham when he made his report on this subject, states that notwithstanding the supply of silver to gold in weight had been for many years as 40 or 50 to 1, yet the price of gold to silver had not varied much from the proportion of 15 to 1. Mr. Ingham remarked on the stability of the ratio between the two in France and England for ten years before his report, and we all know that until recently the proportion fixed by law in 1834, in the United States, preserved the two metals in circulation together. Such ought to be the state of things, reasoning from theory. If in any country silver, as compared with gold, be too low according to the legal standard, it will leave that country for others where it is sufficiently valued, and it will leave the uses of currency for those of the arts if more be given for it in manufactures than at the mints. All this tends to produce an equilibrium by raising the value of the one as currency, and diminishing that of the other as bullion. There are already symptoms of the commencement of that process. The premium on silver (see table C) in New York and London is less than it was in January, 1851, and still less than that of May, 1851, when it bore the greatest premium, being at the rate of 15.460 to 1, which it is to be observed is a lower value for silver than is proposed in the accompanying bill, for silver coins of the smaller denominations. In addition to these considerations, we are to remember that the higher price of silver and the lower price of quicksilver must both stimulate the production of the former.

But notwithstanding these considerations, the committee have determined to adopt the recommendation of the Secretary of the Treasury, which will at least accomplish the end of giving the community a currency of silver tokens, instead of one of bank notes of small denominations. The great measure of readjusting the legal ratio between gold and silver, cannot be safely attempted until some permanent relations between the market values of the two metals shall be established. The ratio of 14.884 to 1, as proposed by the Secretary of the Treasury, has a great recommendation in the fact that it will make the new silver coins of convenient weights, not only for the manipulations of the mint, but for the *money of account* with the residue of the world.

In examining the subject of coinage, another question has pressed itself for consideration. The capacity of coins to perform all the offices of a currency, depends more upon the denomination than has generally been supposed. (See table H.) When different coins are prescribed to a country, those will be most used which are capable of making most payments, and those will make the most payments which can be transported and counted with the greatest convenience. By convenience of transportation is meant not only the facility, but the safety with which they may be carried. By the convenience of counting is meant those which alone, or in combination with others, can make the most payments, and at the same time be most easily and speedily counted. Thus, the smaller the coin, the more payments it is capable of making, and also the more time will it consume to make large payments in them. The larger the coin, the fewer payments it will make, but the greater the economy of time in using them to settle great amounts. We should expect, then, to find that the pieces for which there is a demand in the greatest number, are neither the largest nor smallest.

Thus, of the gold pieces in this country, by far the larger number consists of the half-eagle. In France, the gold piece coined in the largest number is the twenty-franc piece, which, of their coins, is nearest in value to our half-eagle. In Great Britain, the sovereign piece, which approaches still nearer to our half-eagle in value, is in most demand. Of the larger silver coin, we coin most halves, the French most five-franc pieces, the Austrians most rix-dollars. Of the smaller silver coins, we coin most dimes, the English most shillings, (21.8) the French most of the one-franc piece, (18.5) Austria most of the twenty-kreutzer, (16.2) Spain most of the pistareen, (18.6;) thus showing something like an identity of value in the coin which makes most payments and is in most demand. (See table D.) But it is to be observed that the values invested in the different coins, by no means correspond with the number of pieces. This conclusion is also somewhat strengthened by the relative wear of some of the pieces, in regard to which we have information. If of the same thickness and fineness, the greater the wear, the greater the rapidity with which they have circulated. Thus, according to Lord Liverpool, (p. 70, Doc. 117, referred to) in *eleven* years the half-crown loses 1 $\frac{1}{2}$ % per cent., the shilling five per cent., the sixpence 3 $\frac{1}{4}$ per cent. But according to Mr. Moore, (same, page 70) the guinea loses but two per cent. in fifty years, and silver less—meaning silver coin of the larger denominations. It is true that the greater wear of the smaller coins is to be ascribed, in some degree, to their greater superficies in proportion to their weight; but that will not account for the whole of it, as it is to be observed that the shilling piece wears more than the sixpence, because, probably, it is most often used. This great tendency of the small coin to become light, proves that the amount of metal should not be too much diminished, and would also suggest the propriety of a further resort to chemical and metallurgic experience, for the purpose of lessening the loss by abrasion. The considerations of which we have been speaking, also suggest the propriety of attending to the results of experience in relation to the most convenient denominations for counting off payments, either in combination with others, or in single pieces. Instead of the double-eagle, eagle, half-eagle and quarter-eagle, it would be far more convenient to have pieces of one, two, three, five and ten dollars, and to dispense with the double-eagle, which is merely used for bullion. Not only is the superior capacity of these pieces to make numerous and convenient payments demonstrated by theory, but it is proved by experience. Bank notes of almost all denominations have been used, and the numbers which experience has proved to be most convenient are the same with those just mentioned. Following out these views, a provision has been introduced for coining a new gold piece of the value of three dollars. The great capacity of such a piece for making payments, either alone or in combination with the existing gold coins, is so great, (as will be seen by a reference to table H,) that there can be little doubt of the propriety of authorizing this coin. If a two-dollar piece could be substituted for the quarter-eagle, the coinage would be decidedly improved; but the committee have not ventured further than to propose the additional piece.

It will be observed that the bill which accompanies this report, makes these new coins receivable in payment of public dues. There might be danger that such a demand would induce so great a coinage as seriously to depreciate the general currency of the country. But the bill provides that the new coin shall not be struck upon the demand of depositors, but under

the directions of the Secretary of the Treasury, who can thus always limit the amount. Should any further check be necessary, Congress may hereafter define the amounts beyond which such coin should not be receivable for public dues.

The committee have also adopted the recommendation of the Secretary of the Treasury in relation to a seignorage. The mints of this country are likely to become so expensive, and the quantities of the precious metals manufactured in them are already so large, that it would seem to be proper to impose some legal charge upon the manufacture for the purpose of sustaining the mints. The amount of seignorage is a question of some practical difficulty ; but the charge now proposed is somewhat less than that exacted in England or France. In France the charge is one-half per cent. on gold, and one and one-half per cent. upon silver. In England one and one-half per cent. is paid upon gold, and two and one-eighth per cent. on silver. (See table G.) We propose to charge to depositors one-half of one per cent. for both gold and silver ; denying them, however, the right of having the new silver coin struck on their own accounts.

With these views, the accompanying bill is submitted.

APPENDIX.

TABLE A.

The value of all the gold coin in the United States from 1793 to 1841 was	\$29,182,720
During the same period the value of the silver coin in the United States was.....	56,217,185
In France, from 1808 to 1840, the value of the gold coin was.....francs	1,147,644,160
In France, during the same period, the value of the silver coin was..do..	3,864,612,062
In Great Britain, from 1816 to 1840, the value of the gold coin was.....	£59,764,500
In Great Britain, during the same period, the value of the silver coin was.	11,107,450

(For above see *Manuel of Gold and Silver Coins*, by Jacob R. Eckfeldt and William W. DuBois, appendix, p. 203.)

TABLE B.

The following statement was furnished, with much other interesting information, to the chairman of the Committee on Finance, by Mr. George Curtis, of New York:

1. The annual amount of gold gathered in <i>California</i> is variously stated at from \$50,000,000 to \$100,000,000. As at present informed, we must consider, I think, that it now reaches at least.....	\$60,000,000
with a probability, if we look only at the representations from that quarter, that this amount will annually increase; but, if we take experience in respect to other gold mines as a guide, that it will begin, at no very distant day, to decrease.	
2. <i>From Mexico and South America</i> .—The discovery of quicksilver in California already adverted to, and the political quiet into which former convulsions have subsided, must augment, it appears to me, the product of silver in these countries. If this condition of things continues, I cannot think that the annual supply of the precious metals from Mexico and South America will be less than.....	50,000,000
3. <i>From Europe, northern Asia, Australia, &c.</i> —The amount from Russia is understood to be still large. Australia, from recent accounts, promises to produce gold; but enough is not known to form any reliable ground for an estimate in regard to that region. Perhaps the total of gold and silver from these sources may be stated at.....	25,000,000
The whole annual production may therefore be conjectured to amount to.	<u>135,000,000</u>

But as the estimate of gold annually raised in California, in this table, is \$15,000,000 less than the lowest amount suggested by the Secretary of the Treasury, and the amount of gold produced in Russia was, in 1846, (the last year for which returns have been found,) £3,414,427, and for several years previously had been annually increasing, the whole amount of gold and silver raised annually in the world has been rated, by a conjectural estimate in this report, at.....

\$150,000,000

TABLE C.

The following table was furnished by Mr. Thomas P. Kettell, of New York, to the Chairman of the Committee on Finance:

Table showing the price of silver coins in New York and London, monthly, during the year 1851, and up to this time.

Date.	NEW YORK.			LONDON.		
	Mexican dollars.	United States half-dollars.	Spanish and Mexican quarters.	New dollars.	Silver bars—standard.	
January, 1850	1 ¹ / ₂ a 2	1 a 4	— a 1 ¹ / ₂ dis.	58 ¹ / ₂ d.	59 ¹ / ₂ d.	
January, 1851	4 ¹ / ₂ a 4 ¹ / ₂	3 ¹ / ₂ a 3 ¹ / ₂	1 a 2 prem.	59 ¹ / ₂ d.	61 ¹ / ₂ d.	
February, 1851	4 a 4 ¹ / ₂	3 a 3 ¹ / ₂	1 a 2 "	59 ¹ / ₂ d.	61 ¹ / ₂ d.	
March, 1851	4 ¹ / ₂ a 4 ¹ / ₂	3 ¹ / ₂ a 3 ¹ / ₂	1 a 2 "	59 ¹ / ₂ d.	61 ¹ / ₂ d.	
April, 1851	4 a 4 ¹ / ₂	3 ¹ / ₂ a 3 ¹ / ₂	1 a 2 "	59 ¹ / ₂ d.	61 ¹ / ₂ d.	
May, 1851	4 ¹ / ₂ a 4 ¹ / ₂	3 ¹ / ₂ a 3 ¹ / ₂	1 a 2 "	59 ¹ / ₂ d.	61 ¹ / ₂ d.	
June, 1851	4 ¹ / ₂ a 4 ¹ / ₂	3 ¹ / ₂ a 3 ¹ / ₂	1 a 2 "	59 ¹ / ₂ d.	61 ¹ / ₂ d.	
July, 1851	3 ¹ / ₂ a 4 ¹ / ₂	2 ¹ / ₂ a 3 ¹ / ₂	1 a 1	59 ¹ / ₂ d.	60 ¹ / ₂ d.	
August, 1851	3 ¹ / ₂ a 4	2 a 2 ¹ / ₂	1 a 1	59 ¹ / ₂ d.	60 ¹ / ₂ d.	
September, 1851	3 ¹ / ₂ a 4	2 a 2 ¹ / ₂	1 a 1	59 ¹ / ₂ d.	60 ¹ / ₂ d.	
October, 1851	3 ¹ / ₂ a 4	1 ¹ / ₂ a 2	1 a 1	59 ¹ / ₂ d.	60 ¹ / ₂ d.	
November, 1851	3 a 3 ¹ / ₂	1 ¹ / ₂ a 1 ¹ / ₂	1 a 1	59 ¹ / ₂ d.	60 ¹ / ₂ d.	
December, 1851	3 a 3 ¹ / ₂	1 ¹ / ₂ a 1 ¹ / ₂	1 a 1 ¹ / ₂	59 ¹ / ₂ d.	60 ¹ / ₂ d.	
January, 1852	4 ¹ / ₂ a 4 ¹ / ₂	2 ¹ / ₂ a 3 ¹ / ₂	1 a 2 ¹ / ₂	59 ¹ / ₂ d.	60 ¹ / ₂ d.	
February, 1852	3 ¹ / ₂ a —	2 a 2 ¹ / ₂	1 a 2	59 ¹ / ₂ d.	60 ¹ / ₂ d.	

TABLE C.

The following table was furnished by Mr. Thomas P. Kettell, of New York, to the Chairman of the Committee on Finance:

Table showing the price of silver coins in New York and London, monthly, during the year 1851, and up to this time.

Date.	NEW YORK.			LONDON.	
	Mexican dollars.	United States half-dollars.	Spanish and Mexican quarters.	Five-franc pieces.	New dollars. Silver bars—standard.
January, 1850	1 $\frac{1}{2}$ a 2	$\frac{1}{2}$ a $\frac{1}{2}$	— a $\frac{1}{2}$ dis.	95 a 95 $\frac{1}{2}$	58 $\frac{1}{2}$ d.
January, 1851	4 $\frac{1}{2}$ a 4 $\frac{1}{2}$	8 $\frac{1}{2}$ a 8 $\frac{1}{2}$	1 a 2 prem.	96 $\frac{1}{2}$ a 96 $\frac{1}{2}$	59 $\frac{1}{2}$ d.
February, 1851	4 $\frac{1}{2}$ a 4 $\frac{1}{2}$	8 $\frac{1}{2}$ a 8 $\frac{1}{2}$	1 a 2 "	97 a 97 $\frac{1}{2}$	61 $\frac{1}{2}$ d.
March, 1851	4 $\frac{1}{2}$ a 4 $\frac{1}{2}$	8 $\frac{1}{2}$ a 8 $\frac{1}{2}$	1 a 2 "	97 a 97 $\frac{1}{2}$	61 $\frac{1}{2}$ d.
April, 1851	4 $\frac{1}{2}$ a 4 $\frac{1}{2}$	8 $\frac{1}{2}$ a 8 $\frac{1}{2}$	1 a 1	97 a 97 $\frac{1}{2}$	61 $\frac{1}{2}$ d.
May, 1851	4 $\frac{1}{2}$ a 4 $\frac{1}{2}$	8 $\frac{1}{2}$ a 8 $\frac{1}{2}$	1 a 2	97 $\frac{1}{2}$ a 97 $\frac{1}{2}$	61 $\frac{1}{2}$ d.
June, 1851	4 $\frac{1}{2}$ a 4 $\frac{1}{2}$	8 $\frac{1}{2}$ a 8 $\frac{1}{2}$	1 a 1	97 a 97 $\frac{1}{2}$	60 $\frac{1}{2}$ d.
July, 1851	3 $\frac{1}{2}$ a 4	2 a 2 $\frac{1}{2}$	1 a 1	97 a 97 $\frac{1}{2}$	60 $\frac{1}{2}$ d.
August, 1851	3 $\frac{1}{2}$ a 4	2 a 2 $\frac{1}{2}$	1 a 1	96 a 97	60 $\frac{1}{2}$ d.
September, 1851	3 $\frac{1}{2}$ a 4	2 a 2 $\frac{1}{2}$	1 a 1	96 a 97	60 $\frac{1}{2}$ d.
October, 1851	3 $\frac{1}{2}$ a 3 $\frac{1}{2}$	1 $\frac{1}{2}$ a 2	1 a 1	95 $\frac{1}{2}$ a 96	60 $\frac{1}{2}$ d.
November, 1851	3 a 3 $\frac{1}{2}$	1 $\frac{1}{2}$ a 1 $\frac{1}{2}$	1 a 1	96 $\frac{1}{2}$ a 96	60 $\frac{1}{2}$ d.
December, 1851	3 a 3 $\frac{1}{2}$	1 $\frac{1}{2}$ a 1 $\frac{1}{2}$	1 a 1 $\frac{1}{2}$	96 $\frac{1}{2}$ a 96 $\frac{1}{2}$	60 $\frac{1}{2}$ d.
January, 1852	4 $\frac{1}{2}$ a 4 $\frac{1}{2}$	2 $\frac{1}{2}$ a 2 $\frac{1}{2}$	1 a 2 $\frac{1}{2}$	96 $\frac{1}{2}$ a 97	60 $\frac{1}{2}$ d.
February, 1852	3 $\frac{1}{2}$ a —	2 a 2 $\frac{1}{2}$	1 a 2	96 a 96 $\frac{1}{2}$	60 $\frac{1}{2}$ d.

TABLE D—No. 1.

Coinage of American gold from the establishment of the government to December 31, 1851, inclusive.

Periods.	Double-eagles.		Eagles.		Half-eagles.		Quarter-eagles.		Dollars.		Total number.		Total value.	
	Pieces.		Pieces.		Pieces.		Pieces.		Pieces.	Dollars.	Pieces.		Dollars.	
1798 to 1837			132,692		3,983,884		902,100				4,968,626		23,250,340 00	
1838			7,200		320,057		54,924				382,181		1,809,695 00	
1839			88,248		160,549		76,214				276,011		1,376,760 00	
1840			47,338		212,772		61,425				321,635		1,690,802 50	
1841			67,631		74,345		21,625				163,601		1,102,097 50	
1842			106,807		131,066		35,908				276,781		1,838,170 00	
1843			250,624		933,083		452,863				1,690,460		8,302,787 50	
1844			125,061		817,655		85,738				978,464		5,428,230 00	
1845			73,653		648,728		110,511				782,882		3,766,417 50	
1846			101,875		647,231		111,709				760,816		4,034,177 50	
1847			1,438,764		1,080,337		192,824				2,704,925		20,221,385 00	
1848			181,384		372,712		41,445				596,491		3,780,512 50	
1849			677,518		236,929		44,459		986,789		1,695,695		9,007,761 50	
1850			348,951		172,082		358,219		611,801		2,801,764		82,081,738 50	
1851			439,328		530,391		1,546,935		3,656,820		5,577,629		62,614,492 50	
	8,713,416		4,033,864		10,071,721		4,046,889		6,206,910		27,072,760		180,259,297 50	

TABLE C.

The following table was furnished by Mr. Thomas P. Kettell, of New York, to the Chairman of the Committee on Finance:

Table showing the price of silver coins in New York and London, monthly, during the year 1851, and up to this time.

Date.	NEW YORK.		LONDON.	
	Mexican dollars.	United States half-dollars.	Spanish and Mexican quarters.	Five-franc pieces. New dollars. Silver bars—standard.
January, 1850	1 ¹ / ₂ a 2	1 a 1	— a 1 ¹ / ₂ dis.	58 ¹ / ₂ d.
January, 1851	4 ¹ / ₂ a 4 ¹ / ₂	8 ¹ / ₂ a 8 ¹ / ₂	1 a 2 prem.	59 ¹ / ₂
February, 1851	4 a 4 ¹ / ₂	8 a 8 ¹ / ₂	1 a 2 "	59 ¹ / ₂
March, 1851	4 ¹ / ₂ a 4 ¹ / ₂	8 ¹ / ₂ a 8 ¹ / ₂	1 a 2 "	59 ¹ / ₂
April, 1851	4 a 4 ¹ / ₂	8 ¹ / ₂ a 8 ¹ / ₂	1 a 1	59 ¹ / ₂
May, 1851	4 ¹ / ₂ a 4 ¹ / ₂	8 ¹ / ₂ a 8 ¹ / ₂	1 a 2	59 ¹ / ₂
June, 1851	4 ¹ / ₂ a 4 ¹ / ₂	8 ¹ / ₂ a 8 ¹ / ₂	1 a 1	59 ¹ / ₂
July, 1851	3 ¹ / ₂ a 4	2 a 2 ¹ / ₂	1 a 1	59 ¹ / ₂
August, 1851	3 ¹ / ₂ a 4	2 a 2 ¹ / ₂	1 a 1	59 ¹ / ₂
September, 1851	3 ¹ / ₂ a 4	2 a 2 ¹ / ₂	1 a 1	59 ¹ / ₂
October, 1851	3 ¹ / ₂ a 4	2 a 2 ¹ / ₂	1 a 1	59 ¹ / ₂
November, 1851	3 a 3 ¹ / ₂	1 ¹ / ₂ a 2	1 a 1	59 ¹ / ₂
December, 1851	3 a 3 ¹ / ₂	1 ¹ / ₂ a 2	1 a 1	59 ¹ / ₂
January, 1852	4 ¹ / ₂ a 4 ¹ / ₂	2 ¹ / ₂ a 2 ¹ / ₂	1 a 1 ¹ / ₂	59 ¹ / ₂
February, 1852	3 ¹ / ₂ a —	2 a 2 ¹ / ₂	1 a 2 ¹ / ₂	59 ¹ / ₂

TABLE D—No. 2.

Coinage of American silver from the establishment of the government to December 31, 1851.

Periods.	Dollars.		Half-dollars.		Quarter-dollars.		Dimes.		Half-dimes.		Three cents.		Total number.		Total value.	
	Pieces.		Pieces.		Pieces.		Pieces.		Pieces.		Pieces.		Pieces.		Dollars.	
1798 to 1887	1,440,517		87,897,998		5,692,029		12,862,100		14,729,243		.....		122,621,882		48,835,192 90	
1838 .....	.....		3,546,000		832,000		2,197,500		2,200,000		.....		8,865,500		2,315,250 00	
1839 .....	.....		3,449,561		491,146		1,748,115		1,535,150		.....		7,218,272		2,098,686 00	
1840	61,005		2,250,006		614,227		2,690,680		2,258,066		.....		7,777,905		1,712,178 00	
1841	173,000		677,000		572,500		3,630,000		1,965,000		.....		7,017,500		1,115,875 00	
1842	184,618		2,969,704		837,000		3,837,500		1,165,000		.....		9,013,882		2,325,750 00	
1843	163,100		6,112,000		1,163,600		1,620,000		1,165,000		.....		10,125,700		3,722,250 00	
1844	20,000		3,771,000		1,261,200		72,500		650,000		.....		6,774,700		2,260,550 00	
1845	24,500		2,683,000		922,000		1,985,000		1,564,000		.....		7,178,500		1,873,200 00	
1846	169,600		4,614,000		510,000		31,300		27,000		.....		6,251,900		2,558,580 00	
1847	140,750		8,740,800		1,102,000		245,000		1,274,000		.....		6,501,750		2,374,450 00	
1848	15,000		3,760,000		146,000		451,500		1,266,000		.....		6,640,500		2,040,050 00	
1849	62,600		8,562,000		340,000		1,132,000		1,440,000		.....		6,552,600		2,109,850 00	
1850	47,500		2,683,000		602,800		2,441,500		1,645,000		.....		7,418,800		1,868,100 00	
1851	1,300		602,750		248,000		1,426,500		1,641,000		6,167,400		10,086,950		774,897 00	
	2,506,790		132,218,076		15,354,502		36,182,025		34,614,478		6,167,400		227,042,341		77,982,408 90	

TABLE D—No. 3.

Total amount of coinage in pieces, from 1816 to 1840, in Great Britain.

	Pieces.	Value.
GOLD.		
Double-sovereigns	16,119	£32,238
Sovereigns	55,468,389	55,468,389
Half-sovereigns	8,527,681	4,268,840
	64,012,189	59,764,467
SILVER.		
Crowns	1,849,905	462,478
Half-crowns	81,438,484	3,929,804
Shillings	101,645,280	5,082,264
Sixpences	58,324,695	1,458,115
Fourpences	10,871,058	172,850
	208,629,272	11,105,509
Three, two, and one penny		2,190

TABLE D—No. 4.

Amount of coinage in pieces, from 1803 to 1840, in France.

	Pieces.	Value.
GOLD.		
Forty francs	5,110,786	Francs. 204,481,440
Twenty francs	47,160,636	943,212,720
	52,271,422	1,147,644,160
SILVER.		
Five francs	646,209,090	3,231,045,450
Two francs	28,528,804	57,057,608
One-franc	50,359,424	50,359,424
Half-franc	45,068,176	22,534,088
Quarter-franc	14,461,928	8,616,482
	784,627,422	3,864,612,062

TABLE E.

It is impossible to ascertain accurately the quantity of precious metals existing in the world at the time of the discovery of America; but we may make, perhaps, some approximation towards the amount. Adam Smith, assuming corn to be a more accurate measure of value than even silver for the comparison of prices in distant ages, supposes the increase of specie after the discovery of America to have raised the specie price over the real value

three or four times; a result which, he says, is confirmed by French as well as English experience. (See his *Wealth of Nations*, vol. 1, p. 324.) According to his tables, the average price of wheat for sixty-four years preceding 1764 was £2 0s. 6 9-82d. per quarter; and the average for twelve years between the periods of 1499 and 1660 was £0 10s. 0 5-12d., (see same vol., p. 416 to 419,) making a rise of about four to one; but it is to be remembered that this increase was composed of a rise in the real value, as well as of in the silver price. Take it, however, that this increase was due to the precious metals only, and there must have been at least one-third as much silver then as at the period of which we speak; probably there was more. But if we put it now as amounting to only one-third of what we know to have been taken from the American mines up to 1825, when, according to Mr. Ingham's report, the quantity derived from this last source was estimated at \$6,200,000,000, we should have \$2,066,666,666 as the least probable value of the specie in use in the world when America was discovered. But this is probably far too low an estimate of the quantity. Brogniart estimated the annual produce of the mines of the Old World from 1790 to 1802 at \$2,867,488 of gold, and \$2,681,920 of silver, or about \$5,000,000. Now, it is to be remembered that certainly for more than 2,000 years the precious metals had been raised in the Old World, and often probably with much more activity than at the time for which Brogniart estimated. The Uralian mines themselves were certainly worked in ancient times; and Africa, Asia, and parts of Europe, probably yielded more gold and silver annually, and for long periods before the discoveries of America, than they have done since that era, until very recently. Now, if we were to suppose an annual supply over the world of only \$2,500,000 beyond what was lost by abrasion and waste, we should have in 2,000 years only an accumulation of \$5,000,000,000, a fact the existence of which should not surprise us even if demonstrated, when we reflect that, since the use of the bill of exchange, a dollar of specie would effect as many more payments as it would have done at a period when the means of communication and transportation were so slow and imperfect.

TABLE F.

[This statement was furnished the chairman of the Committee on Finance by Mr. J. C. G. Kennedy, superintendent of the census.]

By an investigation of the statistical tables of the different countries in Europe, framed by Moreau de Jonnes, the following table has been constructed, showing the individual increase, and the extent of the period for doubling the number of inhabitants:

	Annual increase.	Period of doubling.
	<i>Inhabitants.</i>	<i>Years.</i>
Belgium.....	1 to 60	41
Holland.....	1 to 62	42
Sardinia.....	1 to 62	42
Norway.....	1 to 78	50
Ireland.....	1 to 72	50
Austria.....	1 to 74	52
Poland.....	1 to 74	52
Scotland.....	1 to 82	57
Spain.....	1 to 82	57
Sweden.....	1 to 86	59
Great Britain and Ireland.....	1 to 90	62
Italy.....	1 to 94	66
Prussia.....	1 to 108	70
Naples.....	1 to 108	76
England.....	1 to 112	78
Germany.....	1 to 116	79
Denmark.....	1 to 120	83
Russia.....	1 to 137	95
Switzerland.....	1 to 140	97
Portugal.....	1 to 140	97
France.....	1 to 170	118

TABLE G.

Extract from a report of Mr. Abbot Lawrence, minister to Great Britain, to the Secretary of State of the United States, of February 19, 1851.

"The gold coins of England are eleven-twelfths fine, and those of France nine-tenths fine, being so nearly alike as to prevent melting and assaying. When gold is taken to the French mint to be coined, the mint retains nine francs per kilogramme, and when silver is so taken, three francs per kilogramme is retained, which alters the relative proportions from 3100 : 200 (or 15½ : 1) to 3091 : 197 (or 15.69 : 1.) The standard of silver coin in England consists of thirty-seven parts of pure silver and three parts alloy. Thus twelve ounces of standard silver contains eleven ounces and two pennyweights of pure silver, and eighteen pennyweights of copper; and the proportion between this and standard gold is as 14.105 to 1."

Extracts from a letter from the Director of the United States mint, dated March 3, 1852, to Mr. William L. Hodge, Assistant Secretary of the Treasury.

"The expense of coinage at this mint during the past year, exclusive of the cost of refining or parting, (which is paid by the depositors under the present laws,) was about 42-100ths of one per cent. on a coinage of \$52,689,878, of which nearly all was in gold. At New Orleans, on a coinage of about \$10,000,000, the per-centage I estimate, on data not entirely reliable, at 1 7-100ths."

"In England the gold is coined at one-half per cent., the silver at two and one-eighth—these charges being, however, paid by government, and not by depositors. At the mints in British India, the seignorage is two per cent. on both gold and silver.

"Looking merely to the support of the present establishments, I should estimate a charge of one-half of one per cent. on the coinage of gold as sufficient for their support, in view of the deposits probably to be received. If mints are established in California and New York, this per-centage would, no doubt, be too small, since the execution of the same amount of coinage, divided among several mints, is more expensive than if performed at one establishment."

TABLE H.

[The following was prepared by Mr. Blodgett, assistant of the Smithsonian Institute, at the request of the chairman of the Committee on Finance:]

The several payments within one hundred dollars which can be made by each of the coins \$20, \$10, \$5, and \$2½, are as follows:

\$20 piece, (\$20, \$40, \$60, \$80, &c.).....	5
10 piece, (\$10, \$20, \$30, \$40, \$50, &c.).....	10
5 piece, (\$5, \$10, \$15, \$20, \$25, &c.).....	20
2½ piece, (\$2½, \$5, \$7½, \$10, &c.).....	40

The distinct payments by the first and second are identical with those made by the second alone; as—

\$10, \$20, \$30, \$40, &c.....	10
By the first, second, and third—	
\$5, \$10, \$15, \$20, \$25, &c.....	20
By the first, second, third, and fourth—	
\$2½, \$5, \$7½, \$10, \$12½, &c.....	40

The whole number of payments by all these in undivided numbers is but twenty, the \$2½ coin adding fractional payments only to those made by the first three. The proportion paid by these coins is therefore but 20-100ths of possible payments either in whole or fractional numbers.

A \$3 coin would pay—

\$3, \$6, \$9, \$12, \$15, &c.....	33
Of which \$3, \$6, \$9, \$12, \$15, &c., are new.....	27

The first four, with the \$3 coin, added in various combinations, would pay, in new payments, as follows:

\$3, \$6, \$8, \$9, \$11, \$12, \$18, \$14, \$16, \$17, \$18, \$19, \$21, &c. 76

And with the twenty previously paid. 96

Leaving unpaid the numbers \$1, \$2, \$4, \$7, 4-100ths, which may be readily paid by exchange.

The several payments within \$10 which may be made by coins less than \$1, and including \$1, are as follows, (in cents, making 1,000 payments:)

By \$1 00. 10

By 50. 20—adding 50 cents, \$1 50, &c. 10

By 25. 40—adding 25, 75 cents, \$1 25, &c. 20

By 10. 100—adding 10, 20, 30, 40, 60 cents, &c. 60

By 5. 200—adding 5, 15, 35, 45, 55, 65, 85 cents, &c. 80

By combining the ten-cent piece with the higher coins in the same series, all the payments made by the five-cent piece are readily made, except two, (5, 15.)

And the sum of payments in this way by the first four is. 198

And by the first four with the five-cent piece. 200

By the three-cent piece alone there are made. payments.. 333

Of which are new 3, 6, 9, 12, 18, 21, 24, 27, 33 cents, &c. 265

By combination with other coins it pays. 996

Or all possible payments except four, (1, 2, 4, 7 cents,) which may readily be paid by exchange.

Payments in \$100; assumed number 100.

	By repeating the coin.	By this & higher coin.	New payments.	Proportion of each coin.	Added by exchange.
Twenty-dollar piece.	5	5	5	5-100	0
Ten-dollar piece.	10	10	5	5-100	0
Five-dollar piece.	20	20	10	10-100	0
Two-and-a-half-dollar piece.	40	40	20	20-100	0
Sums.			40	20-100	0
Remaining unpaid.			60	80-100	0
Add three dollars.	82	96	76	76-100	4
With the last, directly and by exchange..			100	100-100	0

Payments in \$10; assumed number 1,000.

	By the coin alone.	With other coins.	New payments.	Separate proportion.	Combined proportion.	Payments added by exchange.
One-dollar piece.	10	.....	10	10-1000	.....	0
Fifty-cent piece.	20	20	10	10-1000	20-1000	0
Twenty-five-cent piece.	40	40	20	20-1000	40-1000	0
Ten-cent piece.	100	198	158	100-1000	198-1000	†2
Five-cent piece.	200	200	2	200-1000	2-1000	0
Three-cent piece.	333	996	796	333-1000	996-1000	†4

*In half-dollar divisions.

†Many of the payments made by combination may more readily be made by exchange.

The series of denominations above \$1 is mainly decimal, and adapted to computation rather than currency. Its terms cannot add to the range of payments by combination, and gain nothing by exchange of pieces. Its value for currency seems, therefore, to require the introduction of another denomination for this purpose.

Convenience of payment requires a regularly increasing number of the higher coins.

Retention of the coin, or the less number of the large payments in which these are required, which will be made in a given time, adds more to this increase of demand.

Frequency of the smaller payments and adaptation to the special denominations now used, or that may be introduced, renders the demand disproportionately great and irregular for the lower coins.

The adaptation of gold coinage to the intrinsic want within its range must be regarded as incomplete; the supply of bank notes and silver in the same range is very variable: and for these reasons, no determinate ratio for present or prospective purposes can be given as the basis of their issue.

[No. 151.]

LEGATION OF THE UNITED STATES,
London, December 31, 1851.

SIR: I had the honor to address you in my despatch No. 101, on the 19th February last, suggesting some changes in our system of coinage. Believing that this question will be brought forward in Congress during its present session, I have thought it might perhaps be of some service to communicate further with you on the subject in connexion with that despatch. The silver coinage of England is affected by a seignorage of about ten per cent.; a pound troy being coined into sixty-six shillings, or an ounce into five shillings and sixpence; while the price is rarely more than five shillings per ounce. The sixpence per ounce at which it circulates in England, of course prevents its exportation. Silver in England is not a legal tender to a greater amount than forty shillings, and the quantity necessary for small exchanges is determined by the government, which does not coin it as it does gold, for any one depositing bullion. In the United States the standard of silver is put too high in proportion to gold, and cannot, I think, be maintained. The following are the relative proportions of gold and silver, as fixed by some European governments in their coinage:

England	about	14.159	silver	to	one	of	gold.
Russia	"	15.333	"	"	"	"	"
Holland	"	15.5	"	"	"	"	"
France	"	15.5	"	"	"	"	"

In my last despatch I referred to the fact that the gold coins of France are not melted and assayed in the mints of England, and *vice versa*, to the similarity of the French and English standards. I learn, however, that it is not referable to that fact, but to that fact that in each country there is a uniformity in the quality of its own coins.

Our coins are melted both in France and in England.

The adoption of the standard of either of these countries would not, of itself, prevent the necessity for this; since it does not arise from a disparity of standard, (which, within certain limits, is a matter of indifference) but from a want of constant conformity to the standard adopted. It would appear from a recent trial at the bullion office, in London, that there is a want of conformity between the coins of the parent establishment and those of the branch mints in the United States. Twelve pounds weight of United States gold coins of the Philadelphia mint, was compared with a like weight from the New Orleans branch mint, and a difference found, on assay, of an eighth of a grain, which is equivalent to 1.125 per ounce. And I have before stated, that the United States eagles and half-eagles have been found by the Bank of England to be sometimes reported by assayers as better than standard.

In my former communication, I suggested the expediency of adopting the English standard, in order to prevent melting our coin. I was not then aware that, in consequence of the causes I have stated above, they do not generally command confidence in Europe.

The wear of coins depends on the nature of the alloy, and the character of the engraving and milling.

The quantity of gold turned out from California has been greater this year than was anticipated; and from all accounts, large quantities are likely to be supplied for some time. The discovery of gold in Australia has also caused many persons to believe that the alteration in the relative value of gold

and silver will yet be much greater. It should, however, be borne in mind that the discovery of quicksilver, or cinnabar, in California, must stimulate the production of silver, as the price of quicksilver has already been materially reduced. Before the revolt of the South American colonies, the government of the mother country sold quicksilver at fifty dollars per quintal in the interior; but since the declaration of their independence, the monopoly under which the Spanish quicksilver mines have been held, caused it to rise as high as one hundred and thirty dollars a quintal. This at last drove the less fruitful silver mines out of the market, as they could no longer be worked at a profit, and artificially restricted the supply of silver. The effect of the recovered cheapness of an article so indispensable in its extraction, may be perhaps now seen in the almost daily increasing supplies of silver from South America, and the large quantities of silver said to have been lately found in the northern parts of California. These considerations, together with the spur which will be given the silver mining by the increasing demand, give reason to suppose that it may be some time before any very great change may take place in the relative value of the two metals, if it take place at all.

These suggestions do not, however, change my opinion upon the expediency of having but one standard. I think it will hereafter be found a source of great inconvenience to attempt to maintain more than one, which should be of gold, and the silver coinage adapted to it, in accordance with the suggestions contained in my despatch No. 101.

The above considerations lead to the conclusion that whatever may be the increase in the precious metals, their fitness as a standard of value would be unaffected, except in their exchange power with other things; and any effect upon that power must be so gradual, as to affect none but debts contracted for so long periods as to be out of all commercial considerations. Doubtless it would affect the debts of indebted countries funded for a long period, and the interests of those concerned in them.

I am indebted for many of the foregoing facts to the manager of the bullion office, and shall be much gratified if they prove useful to the government. I close with renewing the suggestion that too much care cannot be taken to insure perfect uniformity in our coinage of gold, and that an immediate remedy should be applied to correct the existing evil.

I have the honor to be, sir, very respectfully, your obedient servant,
ABBOTT LAWRENCE.

HON. DANIEL WEBSTER,
Secretary of State, Washington, D. C.

[No. 101.]

LEGATION OF THE UNITED STATES,
London, February 19, 1851.

SIR: You gave me to understand a few days since, in a private note, that our government would be glad to receive suggestions upon the subject of the coinage of the United States, in order that measures may be taken to retain in the country a sufficient quantity of silver coins to furnish change for its daily business transactions. I have never given the subject much thought, and therefore do not feel competent to do more than make suggestions for your consideration.

I have thought it would be wise to abolish the double standard of value
Rep.—3

now existing in the United States, and adopt but one—and that of gold. The value of gold at our mint, compared with silver, is about three per cent. higher than that of France. For example, it stands in France at 15½ to 1; whereas at our mint it stands at 16 to 1. It follows, therefore, that during an adverse balance of trade, silver will be at a premium, and will be the first to be shipped. It does not appear to me to be possible to maintain permanently a double standard, without often having one or the other of the two metals at a premium, as the supply of one or the other will fall short of the proportions established at the mint.

The gold coins of England are eleven-twelfths fine, and those of France nine-tenths fine—being so near alike as to prevent melting and assaying. When gold is taken to the French mint to be coined, the mint retains nine francs per kilogramme; and when silver is so taken, three francs per kilogramme is retained:—which alters the relative proportions from 3100 : 200 (or 15½ : 1) to 3091 : 197, (or 15,6% to 1.) The standard of silver coin in England consists of thirty-seven parts of pure silver and three parts alloy. Thus twelve ounces of standard silver contain eleven ounces two pennyweights of pure silver, and eighteen pennyweights of copper; and the proportion between this and standard gold is as 14,1% to 1.

If our gold coin were brought to the same standard as the English, great expense would be saved in the transmission of coin from one country to the other. Being of the same fineness, it would be weighed merely, and not re-coined, as at present. I was told at the British mint, a year since, that considerable quantities of American coin had been assayed and re-coined from time to time, and had not been always found to come up to our own standard. I now learn, from a private source, that the gold lately coined in the United States has been assayed in Paris, and found to be nearly three-eighths of one per cent. above our mint standard. I have little doubt that both statements are true; and I mention them that the masters of our mints may be careful in their coinage. They cannot show too much care. Our coin should be as exact as any in the world. I would therefore suggest the expediency of bringing our gold coin to the standard of France or England. The latter I think is preferable, as we have much more intercourse with England and her colonies than we have with France: besides, the pecuniary consideration is of some consequence, as the wear of the British standard is less than that of the French.

If it should be thought wise to abolish the double standard—(and upon this point I have little doubt)—I should suggest the coinage of silver tokens with ten or twelve per cent. alloy, which shall be made a legal tender for any sum not exceeding five dollars, and *which the government shall be always bound to redeem in gold on demand.* The issue of such tokens would save the country from inconvenience for the want of silver change. They would furnish a sufficient circulation for the necessities of the community—they would be prevented from depreciation at home by being redeemable in gold; and they would not be shipped, because their value in Europe would be less than in our own country.

These tokens should not contain less than ten per cent. alloy. In this country, when silver was 4s. 11½d. per ounce, the difference was nearly eleven per cent.; whereas now, in consequence of the recent changes, the difference is only a little above seven per cent. Unless a wide margin were adopted, further changes perhaps would have to be made from time to time, as a continued influx of gold from California might produce a rapid depression.

Counteracting causes may intervene to change the relative value of gold and silver. I notice that large quantities of quicksilver are already produced in California, which, as it forms so important an element in the production of silver, may greatly increase the quantity and reduce the value of this metal. Quicksilver has been hitherto almost a monopoly in the hands of a few persons, who could obtain their own prices.

In case gold should continue to be abundant in California, and sums to the amount of forty millions annually taken from that State for three or four years to come, *with a prospect of a continuance of a large supply*, then the standard of value may be materially reduced; and the United States, Great Britain, and France, and doubtless every country in Europe, would be forced to conform to it. In this case the debtor would possess, whether justly or unjustly, a very great advantage over the creditor.

I am not, however, well enough acquainted with the resources of the gold regions of California, to form an opinion upon the quantity of gold that may be expected from that country. I have, indeed, been impressed with the idea that the world can take a very large amount of gold, without materially affecting the standard of value; and that before the world shall really be surfeited with this precious metal, it will either give out in California, or the cost of obtaining it will be so great as not to tempt laborers to leave other employments for that of digging gold. It often happens that when the hopes of mankind are strongly stimulated, they adopt measures founded rather upon those anticipations than realities, and sometimes far in advance of the latter.

I have the honor to be, sir, very respectfully, your obedient servant,
ABBOTT LAWRENCE.

Hon. DANIEL WEBSTER,
Secretary of State, Washington, D. C.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1852.

Ordered to be printed.

Mr. JONES, of Iowa, made the following

R E P O R T :

[To accompany bill S. No. 272.]

The Committee on Pensions, to whom was referred the petition of John Le Roy, report :

That said petition was first presented to the Senate on the 31st December, 1849; and on the 17th of January, 1850, a favorable report was made in the case, accompanied by a bill for the relief of the petitioner. As that report embraces all the facts in the case, the committee now adopt it, and also report a bill for the relief of the petitioner, being similar in all respects to that reported on the 17th of January, 1850.

IN SENATE—January 17, 1850.

The Committee on Pensions, to whom was referred the petition of John Le Roy, report :

That it appears from the testimony that John Le Roy was employed by the quartermaster's department of the army as an express rider in the military service during the war with Mexico; and that on a highly important emergency, when Colonel Erwin, of the Ohio volunteers, with a small force, was on the march to join General Taylor, previous to the battle of Buena Vista, he became shut up in the town of Marin, surrounded by a large body of the enemy; and it became highly important to convey intelligence to that officer of the determination to send a force to his relief the next morning, however hazardous the duty of conveying such intelligence might be; and it is in evidence from Captain Montgomery, under whose orders John Le Roy served, that he "promptly volunteered, and after gallantly running the gauntlet, was fired upon while entering the town by our own sentinel, and wounded in such manner as to render immediate amputation of his left arm necessary." When it is considered that Le Roy so nobly assumed so responsible a duty and so imminent a risk, and so gallantly performed this duty, penetrating the enemy's encampment and lines and, being hotly pursued into the American camp, instead of receiving relief from pursuit, was, by the American sentinel, taken for one of the enemy, who were then

close upon him, and cruelly shot by an American ball, the committee consider this a highly meritorious case ; and being recommended to the favorable consideration of the government by the highest military authority then in command of the quartermaster's department and of the army in that part of the enemy's country, the committee have no hesitation in reporting a bill for the relief of John Le Roy, and in recommending its passage.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1852.
Ordered to be printed.

Mr. JONES, of Iowa, made the following

R E P O R T:

The Committee on Pensions, to whom was referred the petition of Charles H. Buenstein, report:

That the petitioner was a soldier during the late war with Mexico, and was wounded in the battle of Molino del Rey. He states that his name was placed on the pension roll on the 6th of May, 1848, at the rate of four dollars per month, and that on the 4th of February, 1850, it was increased to eight dollars per month; being the highest amount allowed by existing laws to private soldiers. He asks for an increase of his pension; and represents, that in consequence of his crippled state, his present pension is inadequate to his support. The committee do not deem it expedient that there should be special legislation in cases like that of the petitioner, and ask to be discharged from the further consideration of said petition,

IN THE SENATE OF THE UNITED STATES.

MARCH 9, 1852.
Ordered to be printed.

Mr. WADE made the following

REPORT:

[To accompany bill S. No. 273.]

The Committee of Claims, to whom was referred the memorial of Cornelius McCaullay, report:

The memorialist states that he was a manufacturer of fine morocco, in the city of Philadelphia. In 1834, he was called upon by one Isaac Hozier, representing himself, and believed to be, an agent of Walter Lowrie, esq., then Secretary of the United States Senate, who requested him to furnish a certain quantity of morocco, to be used for covering the chairs in the Senate Chamber. He says a Mr. Hozier exhibited a letter of Mr. Lowrie, authorizing him to make the purchase, and stated that he could draw on Mr. Lowrie for the amount. He accordingly furnished the goods and shipped them to Mr. Lowrie. When he was about to draw for the amount, Mr. Hozier again came to Philadelphia with another letter from Mr. Lowrie, and ordered an additional quantity of skins. Before he had completed this order he suspected fraud in Hozier, and went to Washington to get his pay, when he was informed by Mr. Lowrie "that it was a hard case that he should be wronged out of his just claim," or words to that effect; but that the price of the goods had already been paid to Mr. Hozier, who had disappeared.

Mr. Lowrie states that he engaged Hozier to furnish the morocco, and paid him for it; that shortly afterwards Mr. McCaullay called and produced satisfactory evidence that he was an industrious and worthy man; that he had furnished the materials, and had not been paid for them—but that it was not then in his power to afford relief. Mr. Lowrie adds: "He was, perhaps, the only manufacturer in the United States, at that time, who could make the article required; and after much labor, the fruits of his skill and industry were taken from him by the fraud of another." This statement is dated January 23, 1850.

Wm. Root swears, that he was the salesman of McCaullay at the time, and has continued to be so; that Hozier represented himself as acting for Mr. Lowrie, Secretary of the Senate, and by such representation, obtained the goods.

John McMullen, book-keeper, swears to the same facts, and that the goods have not been paid for.

In order to show that Mr. Lowrie was in the habit of authorizing the

upholsterer to make purchases of materials, as his agent, Mr. McCaullay produces several original letters of Mr. J. K. Boyd, (who succeeded Mr. Hozier in doing the upholstery for the Senate Chamber,) in which Boyd distinctly claims to act under instructions of Mr. Lowrie, *Secretary of the Senate*. In one of these letters, addressed to J. B. Sutherland, esq., and dated 9th of September, 1836, Mr. Boyd says:

"We are under the necessity of troubling you with a small commission on the part of the Senate of the United States. Mr. Lowrie, the Secretary of the Senate, informs me you have some knowledge of the gentleman who furnished some printed leather skins, suitable for covering the Senate Chamber chairs, to a person at that time, (and from all the information I can derive, they never were paid for by the person who obtained them, yet they were paid for by the government to Hozier; I believe that was his name.) Mr. Lowrie requests me to write to the same gentleman, requesting him to forward one dozen of the same kind—a pattern is herewith enclosed; and on their arrival to him, Mr. Lowrie, Secretary of the Senate United States, the bill will be promptly paid." And on the 8th November, 1836, Mr. Boyd writes to Mr. McCaullay for the skins, "by particular desire of Mr. Lowrie, the Secretary of the Senate."

The petitioner states "that the reason he has not before this time petitioned for the amount of his bill, is that he was of the opinion that said Lowrie, your then Secretary, was dead, (a Walter Lowrie having been reported to be dead, which turned out to be his son;)" but having discovered his mistake, he proceeded to obtain Mr. Lowrie's statement and to submit his claim. He deposes to the truth of the facts stated, and to the truth and justice of his account, which amounts to the sum of \$751 13, to which he adds interest at six per cent., \$720, and prays payment.

It seems to be clearly proved that the goods were of a peculiar character and very difficult to be obtained; that they were furnished by Mr. McCaullay at the request of an individual in the employ of the Secretary of the Senate, and that McCaullay supposed the Secretary would be responsible for them; that they were received, and applied to the use of the Senate, and that the petitioner has received no remuneration for them.

And the committee think it may be inferred from the letters of Mr. Boyd, that Mr. Lowrie, while Secretary, was in the habit of ordering goods through the agency of other persons temporarily in his employment. These goods were obtained through such an agency; and the loss resulted, according to the statement of Mr. Lowrie himself, from the fraud of a person in his service. The goods do not appear to have been delivered to the agent, but to have been sent directly to the Secretary of the Senate. He received and used them. Did McCaullay act with "reasonable prudence" in sending the goods to Mr. Lowrie at the request of his employee, Hozier, who produced, according to McCaullay's affidavit, written authority to make the purchase? Was not the Secretary as much bound to look after the honesty of his employees, as strangers could be who were brought in connexion with them solely in consequence of their relation to him?

It appears that McCaullay applied to the Secretary for payment "soon after" the receipt of the goods, indeed before the entire completion of the delivery. What more could he have done? The property was beyond his reach and in the possession of the Senate; a person in the employ of the Secretary had obtained the money, and thus "the fruits of his skill and industry" were taken from the petitioner "by the fraud of another."

It does not appear to the committee that the petitioner was guilty of that degree of negligence which would justify the government in withholding equitable relief; they therefore report a bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 9, 1852.

Ordered to be printed.

Mr. GWIN made the following

REPORT:

[To accompany bill S. No. 274.]

The Committee on Naval Affairs, to whom was referred the memorial of L. M. Goldsborough, G. J. Van Brunt, and S. F. Blunt, officers of the navy, ordered to California and Oregon on special duty, praying to be allowed additional compensation, have had the same under consideration, and report:

That in November, 1848, the memorialists were ordered by the Navy Department to proceed to California, as the naval members of a joint commission of army and navy officers, instituted by the authority of the President of the United States; to explore the countries of California and Oregon, and report upon certain military, naval, and other subjects connected therewith; that, as well in travelling to, as on reaching, the scenes of their labors, and during the whole period they were employed on this service, being about two years, they found to exist the most extraordinary condition of things, especially in relation to the prices of labor, and of all kinds of articles of common and absolute necessity; that they were not attached to any vessel of the navy, while engaged in their duties in California and Oregon; and that although they were conveyed from place to place by a government propeller, yet their duties were on shore, and required them to be there—at one period for several months uninterruptedly. The memorialists further represent, that in consequence of the peculiar circumstances referred to, their ordinary pay was wholly inadequate for their support, and beyond that pay no allowance whatever, for extra expenses of any sort, has ever been made to them, or can be made without the authority of Congress.

The committee are satisfied of the correctness of the statements made by the memorialists, and that their pay was insufficient to enable them to meet the additional expenses they were necessarily compelled to incur, during the discharge of their official duties, and it is believed that the relief asked for in their case is not only just and proper, but sanctioned by precedent. It would be an act of great injustice to order officers away from their place of residence, upon laborious and important public duty, involving expenses far beyond their pay, without providing for the re-imbursement of those expenses; and the committee are of opinion, that the allowance to each of these officers of an amount equal to twice the pay of a commander in the

navy, during the time they were on this special service, to wit: from the 1st of April, 1849, the date upon which they arrived at San Francisco, to the 27th of November, 1850, at which time they were detached from the said commission, deducting therefrom the amount of regular pay received by them between these dates, is not more than sufficient to re-imburse the memorialists; and they accordingly report a bill for their relief.

IN THE SENATE OF THE UNITED STATES.

MARCH 9, 1852.
Ordered to be printed.

Mr. SMIELDS made the following

REPORT:

[To accompany bill S. No. 275.]

The Committee on Military Affairs, to whom was referred the memorial of Sylvester Churchill, United States army, report :

That he was appointed inspector general on the 15th of September 1841, to rank from the 25th June of that year; that on the 23d August, 1842, a law was passed, which, among other things, abolished the office of one of the two inspector generals of the army.

The President and Secretary of War, however, found it absolutely necessary, for reasons which they assign at length, to continue both inspector generals until the 29th of April, 1845; during which time the memorialist discharged the duties of the office with acknowledged zeal and ability.

On the 29th of April, 1845, the President deemed it necessary, under the law already alluded to, to abolish the office; and the memorialist, being the junior, was honorably discharged. The necessity of the service, however, and the injustice done to a meritorious officer, induced Congress to restore the office; and, on the 21st January, 1846, the memorialist was restored to his former rank and emoluments.

During the interval, from July 8th, 1845, until 21st January, 1846, he continued in public employment; and, by an oversight in the act which restored his office, he is unable to draw pay for that period, without a special act. The amount is \$1,020 14, to which he is justly entitled.

The committee concur with the War Department in recommending that justice be done, in this case, to a gallant and meritorious officer, by the passage of a special law for his relief.

IN THE SENATE OF THE UNITED STATES.

MARCH 9, 1852.

Ordered to be printed.

Mr. SHIELDS made the following

REPORT:

[To accompany bill S. No. 276.]

The Committee on Military Affairs, to whom was referred the petition of Colonel James R. Creecy, have had the same under consideration, and respectfully report :

That, on the 20th day of May, 1846, Major General Edmund P. Gaines authorized and requested Colonel Creecy, then a resident of New Orleans, Louisiana, to raise a regiment, to serve as infantry or riflemen, to march to the relief of General Taylor, on the Rio Grande. In pursuance of such order, Col. Creecy proceeded to raise and recruit a regiment, and expended in this service, according to the best estimate of the committee, about five hundred and fifty-two dollars and fifty cents. The regiment was afterwards disbanded, by order of the department, without any allowance having been made to him for the trouble and expense incurred in raising the same. The committee therefore recommend the favorable consideration of the claim, and for that purpose report a bill.



IN THE SENATE OF THE UNITED STATES.

MARCH 9, 1852.
Ordered to be printed.

Mr. PRATT made the following

R E P O R T :

The Committee of Claims, to whom were referred various petitions of assistant marshals, praying additional compensation for their services in taking the late census, have had the same under consideration, and now report :

That under the census act, the compensation of these officers is fixed with mathematical certainty ; that the petitioners therefore knew what remuneration they would receive before they entered upon the discharge of their duties ; and your committee cannot, therefore, see any just claim which the petitioners can have to the allowance which they ask for. Your committee therefore ask to be discharged from the further consideration of these cases.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1852.

Ordered to be printed.

Mr. SEWARD made the following

R E P O R T :

[To accompany bill S. No. 280.]

The Committee on Commerce, to whom was referred the petition of Elisha William Budd Moody, of Yarmouth, in the province of Nova Scotia, report :

That on the 17th day of November, 1848, the American ship Caleb Grimshaw, of New York, bound for that port, with four hundred and twenty passengers on board, took fire, and gave signals of distress; that the British barque Sarah, of which the petitioner was owner, and David Cook was master, was then on her voyage from London to St. John, in New Brunswick, and discovering the signals, tacked ship and ran up to the Caleb Grimshaw, and lay by that vessel four days during a gale, and in that time succeeded in rescuing three hundred and ninety-nine human beings; that the Sarah proceeded with the persons thus saved to Fayal, where she was quarantined and subjected to heavy port charges; that provisions were purchased there for them, at great expense. That by this detention from her voyage the insurance of the Sarah was lost, and that she suffered damage by a gale while lying at quarantine; and that she lost the advantage of a return voyage with freight during that season.

An act of such marked humanity ought not to be left to involve the owner of the barque in any loss. The committee report a bill authorizing the Secretary of the Treasury to audit and pay the moneys actually expended, and the losses actually sustained.

To the Senate and House of Representatives of the United States of America in Congress assembled :

The petition of Elisha William Budd Moody, of Yarmouth, in the province of Nova Scotia, merchant, respectfully sheweth :

That your petitioner is the owner of a certain ship called the "Sarah;" that the said vessel sailed from the port of London, in the kingdom of Great Britain, on the twenty-sixth day of the month of October last past, commanded by David Cook, and bound to the port of St. John, in the province of New Brunswick. That, on the seventeenth day of the month of November last past, whilst prosecuting the said voyage, a ship was discovered in

distress, when the master of the Sarah tacked ship and ran up to her, when he found that the vessel in distress was the American ship "Caleb Grimshaw," of New York, with four hundred and twenty passengers on board, and that she was then on fire. That the ship Sarah lay by the said ship Caleb Grimshaw for the space of four days, during the most of which time the wind blew a gale, and succeeded during that space of time in rescuing from the burning ship three hundred and ninety-nine human beings. That the ship then proceeded to Fayal, at which place she was quarantined, and heavy port charges there incurred. That the provisions and water on board the said ship were consumed by the persons saved, which had to be replaced at Fayal at double the cost they were procured for in England. That, whilst lying at quarantine a gale of wind came on, which caused the ship to part both cables, which, with her anchors, were lost, and the ship narrowly escaped becoming a total wreck. That, in consequence of the deviation of the ship from her prescribed voyage, the insurance effected on her became void, and, from her detention, the pecuniary loss to your petitioner very great, as a freight was engaged for the ship at Saint John, New Brunswick, for London, which would have amounted to between nine hundred and one thousand pounds sterling; but owing to the lateness of the season, the ship was obliged to put into the port of Yarmouth, at the entrance of the Bay of Fundy, and there haul up until the month of April, at a very great expense; the crew of the ship having been shipped in London, and thence to return, refused to quit the ship, except by receiving additional pay.

That your petitioner has never received remuneration from any person for port charges incurred at Fayal, nor for the loss of time of the said ship, caused by saving the persons aforesaid, (thirty of whom, your petitioner has been informed, and believes, were American citizens,) the loss of freight, the provisions consumed, the extra wages paid to the crew aforesaid, and the wear and tear of the ship consequent upon her deviation from her intended voyage.

That the passengers saved from the ship "Caleb Grimshaw" were conveyed in the ship "Sarah," from Fayal to New York, for the sum of four hundred pounds; a sum scarcely sufficient to cover the expenses attendant on the voyage.

Your petitioner, therefore, humbly prays that your honorable House will be pleased to take his case into consideration, and grant him such relief in the premises as to your honorable House may seem proper.

And your petitioner, as in duty bound, will ever pray.

E. W. B. MOODY.

YARMOUTH, N. S., *March 10, 1850.*

BRITISH VICE CONSULATE FOR THE ISLANDS OF FAYAL AND PICO.

On the date hereof, before me, the undersigned, vice-consul to her Britannic Majesty for the above named islands, personally appeared David Cook, master of the British barque "Sarah," of Yarmouth, N. S., of the burden of 537 tons or thereabouts, who requested me to note this his statement of the proceedings relative to the late American ship Caleb Grimshaw, whilst in the prosecution of a voyage from the port of London to St. John, N. B.

That the said barque "Sarah" sailed from the port of London on the 26th of October last past, and continued on her voyage, without meeting with any thing material; when on the 17th of November last past, at 3 p. m., being then in latitude $41^{\circ} 32'$, and longitude $37^{\circ} 38'$, a ship in distress was observed running to her. This appearant tacked ship, and at 5 p. m. came up with her, and learnt that she was the American ship Caleb Grimshaw, of New York, with four hundred and twenty passengers on board, from Liverpool, bound to New York, and that she was on fire. All her boats were on the water, and at 7 p. m. three of them were in tow of the Sarah, containing the captain, his wife, child, and servant; the doctor, steward, cook, the second and third mates, and eight seamen. These boats were subsequently lost during the night. At 9 p. m. it came on to blow a heavy gale from the westward, and orders were given to the ship to follow the Sarah, as it was impossible, in consequence of the weather, to render any assistance before morning. At midnight it blew a furious gale. On the 18th, more moderate but a heavy sea running, at 4 p. m., came up with the ship, hove to, and learnt that the fire was increasing. Lowered all the boats from the Sarah, and at 9 p. m. had got on board about one hundred souls, when it commenced blowing a heavy gale from the N. W. Hauled up all the boats, having stove one of them in getting the passengers, and hove the ship to. All hands were put on six ounces of water and provisions. On the 19th, at 4 p. m., the ship was out of sight, the weather not allowing this appearant to wear the ship to keep in sight of the Caleb Grimshaw. At 6 a. m. she was again in sight; at 10 spoke her, when she was found to be still on fire, and learnt that the people on board were famishing for want of water and food. No assistance, however, could be rendered them, as the weather and sea would not permit. On the 20th it still continued to blow a strong breeze from the N. W. with a heavy sea running. At 8 a. m. lowered one of the boats, and with great difficulty sent six seamen to relieve the crew on board the ship, and learnt that the night before sixteen or twenty persons had died for want of water and food. At 11 a. m. land appeared in sight, bearing S., distant about twenty or twenty-five miles. On the 21st, at 6 p. m., Flores Point bore S. E., distant about four or five miles; and the fire increasing on board the Caleb Grimshaw, hove both ships to, and commenced taking the remainder of the passengers on board. At 4 a. m. had got all the passengers on board the Sarah, with great difficulty. This appearant, in conjunction with the master of the American ship, then asked the crew if they would volunteer to run the ship Caleb Grimshaw in port; but they all refused, for her main deck worked one foot each way. The captain then gave orders for the hatches to be taken off, and immediately the ship exploded, and in less than half an hour was burnt down to the water's edge. The passengers were all in a very bad state, and found that the total number of souls saved amounted to three hundred and ninety-nine. This appearant then made the best of his way to Fayal, where he arrived on the 24th ultimo. At 2 p. m., the British vice-consul, undersigned, went alongside, the ship being placed under quarantine, and after receiving this appearant's report of the wants and sufferings of all on board, immediately sent off a supply of water and provisions. On the 26th, at 10 p. m., commenced blowing a heavy gale from the S. W., the sea rising and making a run fore and aft the ship. At 1 a. m. lost the two bower anchors, and expected the ship to go ashore every minute, riding by one small chain and anchor only. It was dreadful to hear the cries and

moanings of the passengers. At 1h. 15m. a. m. the wind changed to the N. W., which saved the ship. On the 27th cleared from quarantine, and got the passengers ashore.

In witness whereof, he has hereunto subscribed his name, with me, the undersigned, at Fayal, the first day of December, 1849.

DAVID COOK.

JOHN S. MINCKIN,
British Vice Consul.

British Vice Consulate for the islands of Fayal and Pico:

I do hereby certify the foregoing to be a true and correct copy, from the original statement executed at this office, which original remains in the archives of this vice-consulate, to serve and avail when and wheresoever requisite.

Given under my hand and seal of office, at the island of Fayal, this 6th [L. s.] day of December, 1849.

JOHN S. MINCKIN,
H. B. M. V. Consul.

PROVINCE OF NOVA SCOTIA, Yarmouth, ss.

I, Thomas Van Buskirk Bingay, of Yarmouth, a notary public for the province of Nova Scotia, duly admitted, commissioned, and sworn, do hereby certify and attest, unto all to whom it doth or may concern, that the foregoing is a true and correct copy of a certain protest, or statement, made as therein expressed, before her Britannic Majesty's vice-consul at Fayal.

Whereof an attestation being required, I have granted the same, under my notarial seal and form of office, to serve and avail as occasion [L. s.] shall or may require, this tenth day of March, in the year of our Lord one thousand eight hundred and fifty.

THOMAS V. B. BINGAY,
Notary Public.

YARMOUTH, NOVA SCOTIA, June 13, 1850.

DEAR SIR: I am honored with your valued favor of the 6th instant, requesting me to furnish the honorable the Committee on Naval Affairs, in the Senate, with a more exact statement of the loss sustained by the barque Sarah, and vouchers to substantiate the same, in saving the passengers and crew of the Caleb Grimshaw; which I now beg leave to enclose, so far as I am in possession of them, viz: Copy of Captain Cook's letter, dated at Fayal, describing the situation he was placed in. Charles McLauchlan's letter, respecting Sarah's freight. Memorandum of Sarah's charter with Captain Hoxie. Sarah's former freight-bill from St. John to England, (Taylor's.) Messrs. Dabney, Braine and Cook's disbursement bills at Fayal and New York.

On the Sarah's leaving London she had a large quantity of provisions and water on board; more than enough to perform the voyage to St. John and back to London, even allowing her double the usual time to perform the voyage; which was nearly all consumed by the crew and pas-

sengers of the Caleb Grimshaw, before arriving at Fayal, which more fully shows by reference to Captain Cook's letter. The American consul at Fayal promised the disbursements for the Sarah, and also for the passengers of the C. Grimshaw. On arrival at Fayal, the British consul expected to take charge of the passengers, and furnish them with some necessities, and agreed with Captain Cook to take them to Liverpool for £800 sterling, the consul to fit up and provision the ship. The passengers made objection to be placed at any other than their destined port. Captain Hoxie, late of the C. Grimshaw, then agreed with Captain Cook to take them to New York for £400 sterling. This sum did not include any former claim. The Sarah was chartered at St. John, N. B., to take a cargo to England, which charter would have amounted to nearly £1,000 sterling; the freight was engaged by my agent. I have not the document in my possession. I enclose his letter, stating that he had abandoned the freight engaged. I beg leave to enumerate some of the losses sustained, independent of £600 sterling, difference between the freight she could probably have made, had she not have deviated, and the sum received for taking them to New York. I consider that she would have performed her intended voyage in ten or twelve weeks from leaving London, which would have placed her in a situation to return with a passenger or other freight early in the spring. In consequence of detention, brought her so late on this coast, that, in place of going to St. John, she was obliged to put into this port, and lay up during the winter, with a large portion of her crew, which were shipped in London to return to England, and were not disposed to take their discharge; some were put off with extra pay, and others remained by her. She arrived here on the 6th of February, and I presume that had she proceeded on her intended voyage, she would have arrived in Great Britain before that period. Second: heavy loss of sails and ropes, destroyed in carrying sail, in order to keep company with the burning ship, and to protect the passengers from the weather—three boats nearly destroyed in saving the crew and passengers, (the Caleb Grimshaw's boats being all lost;) the timbers of all broken in the bilge by striking the ships, one of which we have had to condemn—the others are made to answer for the present by heavy repairs; one was a costly and valuable boat. Detention in saving the crew and passengers, and taking them into Fayal; detention at quarantine; loss of cable and anchors while at quarantine; (I have ordered one chain, and no doubt the cost will be upwards of \$500;) one anchor was procured at Fayal; disbursements at Fayal and New York; very narrow escape of the ship while lying at quarantine at Fayal, which, had she been so unfortunate, would have fallen wholly on the owners, insurance being void on account of deviation. It was a happy circumstance the Sarah was so amply found in provisions, and especially the large quantity of water, there being nothing saved from the burning ship. The expense of the crew and passengers was very heavy against the owners of the Caleb Grimshaw. I have never received any remuneration from any insurance office or underwriters on account of this loss to the Sarah, nor have I instructed any other person to do so, nor do I intend to do so, for the reason that I have no claim that could be sustained. All of which facts I humbly submit for the consideration of the committee.

I have the honor to be, dear sir, with much respect, your most obedient servant,

E. W. B. MOODY.

HOB. WM. H. SEWARD.

The undersigned having read the foregoing letter, and documents therein mentioned, do certify to the truth of the same.

DAVID COOK.

Account of disbursements and port charges of barque Sarah, Cook, master, at Fayal.

1849. December.	Health fees, 8,200; captain of the port's fee, 8,600.....	rls. 6,800
	Pilotage, 6,000; Guarda Mor's account, 5,400.....	11,400
	Harbor master's attendance mooring twice, 5\$; anchorage, 1,200	6,200
	Mathew José's account, mooring twice, sweeping for chain and anchor and unmooring.....	110,000
	Stevedore's account, lighterage, cartage, and filling 1800 gallons water.....	9,000
	Hire of casks for taking off same, grs.....	
	Consul's account, entry and clearance.....	6,000
	$\frac{1}{2}$ hire of mooring 2 chains and anchors, 20 ds. 6\$.....	60,000
	2 bbls. salt beef, 36\$; 2 bbls. pork, 40\$.....	76,000
	910 lbs. American biscuit, 8 rls.....	72,800
	10 lbs. candles, 1,200; 56 lbs. coffee, 6,720.....	7,920
	1 bbl. with 192 lbs. flour, 5 rls.....	9,600
	6 boxes oranges.....	7,200
	200 lbs. brown sugar, 100 rls.....	20,000
	15 lbs tobacco, 720 rls.....	10,800
	Harbor master's attendance unmooring.....	2,000
	6 pair handcuffs, 8,600; 2 bags, 1,000.....	4,600
	An anchor in the place of the one broken.....	160,000
	Amount paid on account of Thos. Williams.....	4,100
		584,420
	5 per cent. commission, grs.....	
		584,420

By draft on Messrs. Samuel Thompson & Nephew.

Fayal, December 6, 1849.

CHAS. W. DABNEY.

Disbursements British Barque "Sarah," David Cook, master, and owners,

To JAMES H. BRAINE, Dr.

1850.			
January 15	Cash paid pilotage inward, J. Murray.....	\$47 75	
18	Cash paid Captain Cook for seamen, &c.....	90 00	
21	Cash paid Captain Cook for himself.....	50 00	
22	Order for advance wages to Paysan, seaman.....	10 00	
	7 bbls. city inspected mess beef, at \$9½.....	68 50	
	7 bbls. city inspected prime pork, at \$9.....	63 00	
	Cartage of do. \$1 40.....	1 40	
	4 bbls. extra superfine flour, at \$5½.....	23 50	
	1 bbl. kiln dried Indian meal.....	3 00	
	2 bushels beans, and 2 bags for do.....	4 00	
	14 bags and 8 bbls. bread—R. Spier's bill.....	54 17	
	S. & E. S. Bloomfield's bill of stores and lighterage.....	48 72	
	Stephen Williams and George Haws, butcher's bill.....	77 57	
26	Clearance at custom-house.....	2 50	
28	Pilotage to sea, 18 ft. at \$1 50; winter month, \$4.....	28 50	
	E. & G. W. Blunt, repairing watches, &c.....	2 25	
	Jas. Dill, shipping 4 seamen, and advance, &c.....	54 00	
	E. & S. E. Bloomfield's second bill of stores.....	22 48	
	Cash.....	689 29	

E. E.

NEW YORK, January 28, 1850.

JAMES H. BRAINE.

Barque "Sarah" and owners in account with Charles R. Taylor.

	Cr.		
1849.			
Jan. 1	By balance of account.....£1 5 11		
	By 210 days' interest on same..... 0 0 7		
		£1 6 6	
May 11	By freight from St. John, N. B., as paid charter party, in full; cash July 30, 1849.....	991 0 0	
			£992 6 6
	Dr.		
May 2	To Captain Cook's draft in favor of C. McLauchlan, due July 4, 1849. £284 0 0		
	To 26 days' interest on ditto..... 1 0 8		
		285 0 8	
June 14	To disbursements paid Sarah, cash, July 30, 1849.....	495 9 0	
			780 9 8
	Balance due July 30, 1849.....		£211 17 8

(Errors excepted.)

For CHARLES R. TAYLOR,
JOHN TAYLOR.

LIVERPOOL, June 14, 1849.

Barque "Sarah" and owners to David Cook,

Dr.

1850.		
Jan. 28	Paid James H. Braine's bill of disbursements at New York.....	\$639 29
	Paid Dabney's bill at Fayal.....	584 42
15	Paid entry at custom-house, New York.....	15 47
16	Paid hospital money for seamen.....	10 60
17	Paid two of the Caleb Grimshaw's seamen, to assist the Sarah's cook.	30 40
	Paid two of the passengers.....do.....do.....do.....	8 00
	Paid Morris & Ostrom for discharging passengers and stores.....	30 00
		<hr/> 1,818 08

DAVID COOK.

I, the undersigned, consul of the United States for the Azores, do hereby certify that Captain William E. Hoxie informed me that he had agreed to pay Captain Cook four hundred pounds sterling for the use of his vessel to convey the passengers saved from the ship Caleb Grimshaw to New York.

Given under my hand and official seal at Fayal, this sixth day of December [L. s.] ber, one thousand eight hundred and forty-nine.

CHARLES W. DABNEY.

I have penned this to serve in case that any accident may have prevented Captain Hoxie's reaching New York.

C. W. DABNEY.

SAINT JOHN, N. B.,
March 1, 1850.

DEAR SIR: Your favor of 15th ult. is at hand, and note contents. I hope you will try to get compensation for loss of time of "Sarah," and would do it at once. You have a claim; and let it be called an act of humanity, or what we may, there ought, and I have no doubt will be a full pay to the ship and owners for performing that act; and if your ship had not been in the way, you could not have met with the loss; and that loss was a voyage, and a freight all secured and waiting for the "Sarah," till I heard of her picking up those unfortunate passengers. I am pleased with Captain Cook's good fortune, and hope it will be a blessing in his hands; and when cash comes into those that can use it, it is a blessing, for it is a sad *sin* to be poor.

I am of opinion 80s. will be about our opening freights. Now if a vessel was here, 85s. to 87s. 6d. might be got for London, and 80s. for Clyde or Liverpool. I closed or took two freights for Irish ports on southeast of island, at 85s., cargo delivered, and have offered them to L. Carns; if he does not take them, I can get vessels here that did offer, and are waiting. Our business looks dull, but we must hope for a change; and should our wood hold at such rates, we must only meet the times, and let it go at as low a rate as foreign or other wood countries can; and I am persuaded

that we can carry at as low as any foreign vessel can. Have no news of importance to give you from this.

I am, sir, yours, &c.,

C. McLAUCHLAN.

To E. W. B. MOODY, Esq.

FAYAL, *November 27, 1849.*

DEAR SIR: After leaving the Downs, I proceeded with a prosperous passage until the 17th inst., when I discovered a sail with signals of distress. It proved to be the ship Caleb Grimshaw, of one thousand tons, of New York, on fire in the hold, from Liverpool for New York, with passengers and general cargo, in latitude $41^{\circ}27'$, longitude $37^{\circ}02'$. I received on board the ship four boat-loads that night; it coming on to blow, took the boats in tow; lost them that night. The afternoon of the 18th succeeded in taking one hundred and thirty-two passengers more with my two quarter-boats; stove one, and was obliged to haul them up; made sail for the island of Flores, the ship following me. The 19th, it being too rough to remove the passengers in their exhausted state, proceeded on until the afternoon, the weather moderating a little. The men on board the ship becoming too exhausted to steer the ship, I procured six of her men to go and relieve them, and still steered the ships; made the island on the 20th; ran under the lee and commenced taking off passengers at 6h. 30m. a. m. Received them all on board that were alive—399 souls—with the dog. Offered the mate and eight men my life-boat, to go on board the ship and follow me to Fayal. They went on board, and lifted one of the hatches to examine the state of the fire; the flames immediately burst out; in fifteen seconds she was in one grand, awful flame. I immediately made sail for the island of Flores, and arrived here the 23d, and was placed on quarantine, with all those famishing souls on board; most inhuman treatment.—The doctor of the ship informs me thus: ninety-three missing, and thirteen died on board the Sarah; in all, one hundred and six dead. From my large stock of water and bread, I was able to allow them one pint of water and one-half biscuit per day. Such a scene I pray God it may never be my lot to witness again. On the night of the 26th the wind commenced blowing from the S. S. W. Could not put to sea on account of the confusion on board, and state of the ship. It was lamentable to hear the moans of the passengers. At 11 p. m., parted the starboard chain in the hawse; at 11h. 50m. the larboard chain became slack; it proved the anchor broken in the shank, the ship driving on shore with the anchor and chain that I had got off from the shore; when within three ship's length of the head, where there could be no possible hope of one life being saved, the wind changed in an instant to the N. W., which saved us. I shall make out an estimate loss to the owners of the Sarah, and send you one, and give a copy to the British consul, which I think the British government ought to pay. I am fitting for New York for £400, the United States consul fitting and furnishing all requisites. I have had a great deal of trouble with my sailors, the Caleb Grimshaw's crew being the cause, they trying to make disturbance by furnishing my men with grog with the plunder they

got from the passengers. I guard to prevent boats coming alongside. I shall sail on the 4th, under the sanction of the British consul.

The 5th December.—Could not get the statement in time.

DAVID COOK.

To E. W. B. MOONEY, Esq.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1852.

Ordered to be printed.

Mr. DOWNS made the following

REPORT:

[To accompany bill S. No. 281.]

The Committee on the Judiciary, to whom was referred the message of the President, communicating to the Senate a report "from the Secretary of the Interior, respecting the delay and difficulty in making the apportionment among the several States, of the representatives in the Thirty-third Congress, as required by the act of 23d of May, 1850, in consequence of the want of full returns of the population of the State of California, and suggesting the necessity for remedial legislation," make the following report:

The causes of the failure to receive full returns from California, and the difficulty in making the apportionment, are thus stated by the Secretary of the Interior, in his report to the President:

"Full returns have been received from the agents engaged in taking the census, in all the States except California. Complete returns have been received from nineteen counties in that State, and partial returns from five others, viz: Butte, Sacramento, San Joaquin, Trinity, and Tuolumne. From the remaining four counties, viz: Klamath, Santa Clara, Contra Costa, and San Francisco, no returns whatever have been received. Information has been communicated to the department, to the effect that the census of these counties was duly taken, but that the schedules were destroyed by one of the conflagrations which laid a great part of the city of San Francisco in ashes. No copies of these schedules were preserved, and there is now no legal means of supplying the loss occasioned by their destruction.

"The power vested in the Secretary of the Interior to make the apportionment, is entirely ministerial. He can act only after full returns shall have been received, and he must act upon the whole subject at once. He can only act upon the *official returns*, and he cannot resort to secondary evidence to ascertain the population of any State. It is obvious, therefore, that an insuperable obstacle exists to the performance of the duty devolved upon this department, and it will be for the wisdom of Congress to devise the remedy."

And he suggests the following as the modes in which this difficulty may be obviated:

"In reflecting upon the subject, three modes of overcoming the difficulty have presented themselves to my mind. The first is, for Congress to decide

for itself, upon the best evidence which it can obtain, what was the probable population of California on the 1st of June, 1850, and to direct the apportionment to be made on that basis; secondly, to authorize this department to resort to secondary testimony to prove the contents, as nearly as may be practicable, of the schedules which have been destroyed; or, thirdly, to assume the returns which have been received, as final.

"All these modes are practicable, and I think it probable that substantial justice might be done by either of the two first named."

The first mode here suggested, it is thought is practicable, and may be carried out in such a way as to do justice to the two States (California and South Carolina) interested, and be in compliance with the provisions of the constitution and the act of 1850, providing for taking the census. Document No. 4, and the report above quoted, show that returns have been received from all the counties except four, (Contra Costa, Klamath, San Francisco, and Santa Clara.)

The committee concluded, from the documents before them, that it was a mistake in document No. 4, to state that Klamath was, at the time the census was taken, one of the counties of California. No such county is mentioned in the list of counties taken from the printed journals of that State, (doc. No. 6,) nor in the letter and list of counties and population sent from the Census Bureau to the Senator from California, on the 25th February, 1852, (doc. No. 5.) This is one of the many discrepancies in the statements from the Census Bureau, which have much perplexed and added to the labors of the committee. If there be, then, but three counties from which there were no returns sent to the Secretary of the Interior, the population of these counties can be ascertained, and have been indeed ascertained by evidence which may not only be relied on, but is official and authentic, and in strict conformity to the act of 1850 for taking the census. That act provides (sec. 5,) in defining the duties of the marshals in returning the statements of their deputies, "He shall dispose of the two sets of returns required from the assistant marshals as hereinafter provided for, as follows: one set he shall transmit forthwith to the Secretary of the Interior, and the other copy thereof he shall transmit to the office of the Secretary of the State or Territory to which his district belongs."

Such a return as is here required, was sent by the marshal or census agent of California to the Secretary of State of that State, in April, 1851, before the last returns were destroyed by fire, (doc. No. 6.)

In this return, the population of the three counties from which no returns were sent to Washington, was stated as follows:

San Francisco-----	21,000
Contra Costa-----	722
Santa Clara-----	3,502

making, in all-----	25,224
Add to this the population of the other counties, (doc. No. 4),---	92,597

makes the total population of the State-----	117,821
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Apply to this the ratio according to the latest and fullest returns from California, 93,420, (doc. No. 3,) and it gives her one member and a fraction, 24,401. The addition of the population of these last counties would make a little difference, and lessen her fraction.

The fraction of South Carolina is 47,478, and that of Louisiana is (doc. No. 2) 46,196. This shows clearly that not only has South Carolina, but Louisiana, a larger fraction than California; and that therefore South Carolina is entitled to one representative by her fraction, which would make the number she is entitled to six, and leave California only one member, (doc. No. 7;) and the returns to the Secretary of State of California, both made in April, 1851, show that at that time the returns from some of the counties were imperfect, and efforts were being made to correct them. The only corrections made are shown in the additional population given by them (doc. No. 4) over the first returns; since April, 1851, there are no documents or other evidence showing that any efforts have been recently made to obtain more complete returns, and it is believed to be impossible now, or at any future period, to obtain more accurate returns of the population in June, 1850, which the law requires.

There are, in some of the papers submitted to the committee, estimates of the population of California, making it much higher than the returns show. There are no means of ascertaining the correctness of these estimates; but if there were, they ought not to be made the basis of representation. That must depend on "the actual enumeration" made every ten years. The suggestion is also made in these papers, that there were great and unusual difficulties in taking a correct census in California. There is no doubt of it. But this is not a sufficient reason why the rule provided in the constitution should be departed from. The question of representation is quite too delicate a one, and the States respectively are too deeply interested in it, to allow the slightest departure, in one case, from the strict rule which is applicable to all others. Other States have, no doubt, suffered from inaccuracies in their returns, as well as California; and if a departure from the strict rule is allowed in one case, who shall decide to what other cases it shall not be applied? In the commencement of our government, and whenever new States are admitted where there had been no enumeration, from the necessity of the case, representation was allowed at the discretion of Congress, or on estimates, but never in other cases. There is another difficulty in the way of allowing California two representatives. After allowing her all her returns, her fraction is 21,795 less than that of Louisiana. It certainly would not be just and equal to allow the first, and not the last, an additional number. This may be done, if the Senate shall so direct. But a majority of the committee considered it their duty to ascertain and declare how the existing law ought to be executed, and what are the respective rights of South Carolina and California, not to suggest or recommend a new law.

A bill is accordingly reported, directing the Secretary of the Interior to make out and transmit the certificates of the number of members each State is entitled to, according to the provisions of the census act of 1850, and its passage recommended. Two sections are also reported, amendatory of the census act of 1850.

A.

CENSUS OFFICE,
March 5, 1852.

SIR: Agreeable to your communication of this day, received, I have the honor to forward you herewith, for the use of the Judiciary Committee of the Senate, the following statements marked Nos. 1, 2, 3, and 4.

No. 1, embraces the population of the United States as published officially from this office.

No. 2, statement showing the number of representatives, and the remaining fractions to South Carolina and Louisiana, by allowing California her population from the returns received prior to the 14th February, 1852.

No. 3, statement showing the number of representatives, and the remaining fractions to South Carolina and Louisiana, by allowing California her population from *all* returns received at this office to date.

No. 4, statement showing the number of counties in California; the counties returned in full, those in part only, and those from which no returns have been received.

I have the honor to be, sir, very respectfully, your obed^t servant,

JOS. C. G. KENNEDY.

Hon. ALEX. H. H. STUART,

Secretary of the Interior.

Aggregate of
South Carolin
Louisiana . . .
California, as
President, .

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TABLE No. II.

Population of the United States—Seventh Census, 1850.

	Free popula- tion.	Slaves.	Total popula- tion.	Federal repre- sentative popu- lation.	Representation of each State.	
					No.	Fractions.
Aggregate of twenty-eight States.....	19,197,652	2,570,606	21,768,258	20,740,915	222	8,661
South Carolina.....	283,523	384,984	668,507	614,513	5	47,478
Louisiana.....	272,963	244,786	517,749	419,821	4	46,196
California, as per statement sent by the Secretary of the Interior to the President, and printed, February 20, 1852.....	89,531	.....	89,531	89,531	...	.....
District of Columbia and Territories.....	19,843,859	8,200,376	28,044,085	21,768,883	...	.....
Difference between California returns and estimated population.....	140,271	3,718	143,984	.....	...	.....
Free.....	20,059,389	8,204,089	.....	.....	...	.....
Slaves.....	8,204,089	.....	.....	.....	...	.....
Total.....	28,263,488	.....	28,263,488	.....	...	.....

Representative population, 21,768,883. Ratio, 98,407.

TABLE No. III.

Population of the United States—Seventh Census, 1850—March 5, 1852.

	Free population.	Slaves.	Total population.	Federal representative population.	Representation of each State.
					No. Fractions.
Aggregate of twenty-eight States	19,197,652	2,570,006	21,768,258	20,740,015	222 775
South Carolina	283,523	384,084	668,507	514,518	5 47,413
Louisiana	272,053	244,786	517,739	419,824	4 46,144
California, as per returns received to the present time	92,597	.....	92,597	92,597	... ..
District of Columbia and Territories	19,846,725	3,200,876	23,047,101	21,766,949	... ..
Difference between California returns and estimated population	140,271	8,713	148,984	.....	... ..
Free	72,408	.....	72,408	.....	... ..
Slaves	20,069,899	3,204,089	.....	.....	... ..
.....	3,204,089	.....	.....	.....	... ..
Total	23,263,488	.....	23,263,488	.....	... ..

Representative population, 21,766,949. Ratio, 93,420.

TABLE No. IV.

California—Seventh census.

No.	Counties.	Population of those returned in full.	Population of those returned in part.	Remarks.
1	Butte* . . . . .	.....	3,574	
2	Calaveras	16,884	.....
3	Contra Costa† . . . . .	.....	.....	No returns received.
4	Colusi.	115	.....
5	Eldorado	20,057	.....
6	Klamath† . . . . .	.....	.....	No returns received.
7	Los Angeles	3,530	.....
8	Mariposa	4,379	.....
9	Marin	323	.....
10	Mendocina	55	.....
11	Monterey	1,872	.....
12	Napa	405	.....
13	San Diego	798	.....
14	San Joaquin	3,647	.....
15	San Luis Obispo	343	.....
16	Santa Cruz	643	.....
17	Santa Barbara	1,178	.....
18	Shasta	378	.....
19	Solano	580	.....
20	Sonoma	560	.....
21	Sutter	3,444	.....
22	San Francisco† . . . . .	.....	.....	No returns received.
23	Sacramento	9,087	.....
24	Santa Clara† . . . . .	.....	.....	No returns received.
25	Trinity	1,635	.....
26	Tuolumne* . . . . .	.....	8,351	
27	Yolo	1,086	.....
28	Yuba	9,678	.....
		80,672	11,925	

Total population returned..... 92,597

RECAPITULATION.

Aggregate of counties in the State	28
Counties returned in full	22
*Counties returned in part only	2
†Counties for which no returns have been received	4

CENSUS OFFICE, March 5, 1852.

No. 5.

CENSUS OFFICE, February 25, 1852.

SIR : I have the honor to send you a statement of the returns now received from California, by counties, with the amount of population carried out. It will be seen that the returns from two counties, Butte and Tuolumne, are incomplete, and that from three counties, Santa Clara, Contra Costa, and San Francisco, no returns have been received.

I am, sir, very respectfully, your obedient servant,

JOS. C. G. KENNEDY.

Hon. WM. M. GWIN,
United States Senator.

TABLE No. V.

California.

Counties.	Population.	Counties.	Population.
Butte (partial returns)	3,574	San Luis Obispo	348
Calaveras	16,884	Santa Barbara	1,178
Colusa	115	Sacramento	9,087
Eldorado	20,067	Shasta	378
Los Angeles	3,580	Sutter	3,444
Mariposa	4,879	Trinity	1,635
Marin	323	Tuolumne (partial returns)	8,851
Mendocina	55	Yolo	1,086
Monterey	1,872	Yuba	9,678
Napa	405	Solano	580
San Diego	798	Sonoma	590
San Joaquin	3,647		
Santa Cruz	643		32,597

NOT RECEIVED.

Part of Butte county	Foster, assistant marshal.
None of Santa Clara county	Goggindo.
None of Contra Costa	Dodo.
None of San Francisco	Dodo.
Dodo.	Hulldo.
Part of Tuolumne county	Finchdo.
Dodo.	Pilmoredo.

No. 6.

[Taken from the appendix of the journal of the California Legislature.]

OFFICE OF SECRETARY OF STATE,
San Jose, April 15, 1851.

SIR : I have the honor to transmit herewith a copy of a communication received yesterday from J. Neely Johnson, esq., United States census agent for California. The communication explains itself.

Very respectfully, your obedient servant,

W. VAN VOORHEES,
Secretary of State.

To the HON. DAVID C. BRODERICK,
President of the Senate.

UNITED STATES CENSUS AGENT'S OFFICE. .

SIR : I have been necessarily delayed in complying with the resolution, adopted by the General Assembly of this State, requiring me "to furnish an abstract of the census returns," in consequence of the many causes which have transpired to retard this work, and at the present time I am able to render but a partial and incomplete statement of the same, as the full returns have not been received. A letter of recent date, from the deputy to whom was assigned the district embracing the first two named counties, informs me that he has completed his labors there ; but furnishes no information as to the number of inhabitants there. I have made repeated efforts—thus far ineffectual—to have the census taken in the county of Tuolumne. I have as yet received no information from the deputy last appointed there. In some instances, as you will observe, the returns are given in *round numbers*. In such cases those figures are predicated upon the information furnished by the respective deputies, which will be found a near approximation to the "returns."

The counties of Trinity, Shasta, and Colusi, are given as comprehending one *district*. The gentleman who performed this duty in those counties received his commission in the month of September last, he being then a resident of Trinity. He entered upon this duty without the means of determining the proper subdivisions of this district ; and so erroneous in fact was the general impression then prevailing amongst the population residing there, regarding the northern boundary of the State, that a large population on the Klamath river was not enumerated, being supposed to be comprehended in the Territory of Oregon. The result of this enumeration, when completed, will, with all reasonable probability, fall short of the entire population of the State from thirty-three to fifty per cent. Such a result must naturally occur to the mind of every person conversant with the circumstances surrounding those engaged in the mines—probably the most numerous of our population—residing, as many of them do, in unknown and unfrequented localities, whilst others are constantly changing their places of abode ; thus absolutely precluding the possibility of their being found at all by the *census man*.

I am inclined to believe, from information of the most reliable character, that this disparity is greater in the extremely northern mining counties—

that is to say, Trinity, Shasta, Colusi, and Butte—than elsewhere. In reference to the first three named, that has been partially explained. In all the counties the census was taken in the months of September and October last, when the miners had already, or were leaving in large numbers for the more southern mining counties. In the last two or three months there has tended thitherward a large immigration, and at this time I am well advised that the population of Butte county is as numerous as any other county in the State.

With the foregoing explanation, I hope the returns herewith submitted in the exhibit A will render satisfactory the duty imposed upon me.

Very respectfully, yours, &c.,

J. NEELY JOHNSON,
Census Agent, California.

Hon. W. VAN VOORHEES,
Secretary of State.

EXHIBIT A.

Counties of Trinity, Shasta, and Colusi.....	1,152
County of Butte.....	4,788
Yuba.....	19,052
Sutter.....	8,030
El Dorado.....	20,785
Sacramento.....	11,000
Yolo.....	1,003
Napa.....	414
Sonoma.....	651
Mendocino.....	66
Marin.....	323
Solano.....	580
Calaveras.....	16,884
San Joaquin.....	4,000
Mariposa.....	4,400
San Francisco.....	21,000
Contra Costa.....	722
Santa Clara.....	3,602
Monterey.....	1,872
Santa Cruz.....	674
San Luis Obispo.....	336
Santa Barbara.....	1,185
	<hr/>
	117,218

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1852.

Ordered to be printed.

VIEWS OF THE MINORITY.

The undersigned, members of the Committee on the Judiciary, are unable to concur in that part of the report of the committee, which supposes that justice may be done to the State of California by adding 25,224 for the population of the three counties from which no returns have been received at the census office, to the 92,597 returned; and assuming 117,821 to be the actual population of that State, entitled to be enumerated when the census was required to be taken. The facts presented in this case satisfy the minority that this estimate falls far short of the actual population of that State. It is abundantly shown, that the returns made by the marshal are defective and imperfect. The documents accompanying the report of the committee show that several counties are not returned at all, and the returns from others are marked as but partial. By reference to a communication from the census agent of the State to the Secretary of State of California, dated April 15, 1851, accompanying an exhibit of the population of twenty-two counties, placed at 117,318, it will be found that he therein states, that "the result of this enumeration, when completed, will, with all reasonable probability, fall short of the entire population of the State from thirty-three to fifty per cent."

This impeachment of the returns, declaring their deficiency, comes from the source from which the returns themselves are derived.

The committee were also referred, by the delegation from California, to the report of a joint select committee of the legislature of that State, in April, 1851, on the apportionment of senatorial and assembly districts, and the action of the legislature thereon. The report states, that "the insufficient means furnished by the United States government to the commissioners appointed to take the census, the migratory character of our population, the impracticability of reaching the greatest number of said population in the gorges of the mountains, have rendered the census, so far reported, incorrect and unsatisfactory." The committee, therefore, sought other sources of information to ascertain the population of the State; and they say, that "from all the reliable sources of information within the reach of the committee, they believe that the federal population of California now exceeds three hundred thousand souls. They have arrived at this conclusion from information from all parts of the State, as well as from a record of the overland emigration, the arrivals and departures by sea in the last two years, and the estimated number of resident Californians at the time of the change of flags."

The legislature, adopting this estimate of the population, established the

senatorial and assembly districts, and apportioned the senators and representatives on this basis.

The representatives in Congress from that State have given details, which go to show that the census returns cannot be relied on; and indeed they are so very inaccurate, that great injustice would seem to be the consequence of adopting them as the basis of apportionment of representation of that State in Congress.

The case, then, in the view of the undersigned, stands thus: No census of the population of California, approximating to accuracy, appears to have been taken, under the authority of the federal government. The omission has not been the fault of that State. There is reason to believe, that if accurate returns had been obtained, her federal representation would not be reduced; and in any view of the case, it appears to the undersigned, that her population, exceeding the ratio for one representative, is at least equal to the fraction on which a representative is assigned to South Carolina.

Under all the circumstances, it is believed that greater justice would be done by giving to California an additional representative to the one allotted to her on the imperfect census returns, and thus leaving her number, as it now stands, at two, until a new general apportionment shall be made, under a new census. This can be done without disturbing the apportionment to South Carolina, by increasing the whole number of representatives from two hundred and thirty-three to two hundred and thirty-four.

Annexed are communications, marked A, B, which have been referred to.

J. W. BRADBURY.

H. S. GEYER.

A.

Report of the United States Census Agent, to the Secretary of State.

UNITED STATES CENSUS AGENT'S OFFICE,
Sacramento City, California, April 10, 1851.

SIR: I have been necessarily delayed in complying with the resolution adopted by the General Assembly of this State, requesting me "to furnish an abstract of the census returns," in consequence of the many causes which have transpired to retard this work; and at the present time I am able to render but a partial and incomplete statement of the same, as the full returns have not been received. A letter of recent date from the deputy to whom was assigned the district embracing the first two named counties, informs me that he has completed his labors there; but furnishes no information as to the number of inhabitants. I have made repeated efforts—thus far ineffectual—to have the census taken in the county of Tuolumne. I have as yet received no information from the deputy last appointed there.

In some instances, as you will observe, the returns are given in *round numbers*. In such cases those figures are predicated upon the information furnished by the respective deputies, which will be found a near approximation to the "returns."

The counties of Trinity, Shasta, and Colusi, are given as comprehending *one district*. The gentleman who performed this duty in those counties received his commission in the month of September last, he being then a resi-

dent of Trinity. He entered upon this duty without the means of determining the proper subdivisions of this district; and so erroneous, in fact, was the general impression then prevailing amongst the population residing there, regarding the northern boundary of the State, that a large population on the Klamath river was not enumerated, being supposed to be comprehended in the Territory of Oregon.

The result of this enumeration, when completed, will, with all reasonable probability, fall short of the entire population of the State from thirty-three to fifty per cent. Such a result must naturally occur to the mind of every person conversant with the circumstances surrounding those engaged in the mines—probably the most numerous of our population—residing, as many of them do, in unknown and unfrequented localities, whilst others are constantly changing their places of abode—thus absolutely precluding the possibility of their being found at all by the *census man*.

I am inclined to believe, from information of the most reliable character, that this disparity is greater in the extremely northern mining counties—that is to say, Trinity, Shasta, Colusi and Butte—than elsewhere. In reference to the first named, that has been already partially explained.

In all the counties the census was taken in the months of September and October last, at a period when the miners had already, or were leaving in large numbers for the more southern mining counties. In the last two or three months there has tended thitherward a large immigration, and at this time I am well advised that the population of Butte county is as numerous as any other county of the State.

With the foregoing explanations, I hope the returns herewith submitted, in the exhibit A, will render satisfactory the duty imposed upon me.

Very respectfully, &c.,

J. NEELY JOHNSON,
Census Agent, California.

HON. W. VAN VOORHEES,
Secretary of State.

B.

HOUSE OF REPRESENTATIVES,
March 7, 1852.

GENTLEMEN: I herewith submit in writing, substantially the statements which I made to the committee orally, relating to the census returns of the State of California.

The commissioner appointed to enumerate the population of California admits, in his report, that the enumeration falls short of the actual number of people inhabiting that State, from thirty-three to fifty per centum. In my opinion the commissioner has made a great error in the estimate of the inaccuracy of his enumeration, as he has made, by his own admission, in the enumeration itself.

The constitution of the State of California required that the State should be apportioned for the election of senators and representatives in the year 1851, according to the census returns of the United States.

The returns were, however, considered to be so inaccurate as to be unworthy of attention, and a joint committee was raised from the two houses,

whose duty it was made to inquire into and estimate the population of the State. I had the honor to be chairman of the committee on the part of the House, and know the facts of the case. The data from which the committee formed their estimate of the entire population of the State, was sufficient to satisfy them that it amounted to *three* hundred thousand souls. We informed ourselves, first, as to the number of emigrants who had crossed the plains, and the number who had arrived by sea, and from the total number who had departed: which left us a population of three hundred thousand.

This number, of course, included the arrivals by sea from the first of June, 1850, to April, 1851, and which, for present purposes, should be deducted—I think forty thousand—a large estimate of the number who arrived by sea during that period. I might add, as corroboration of the accuracy of the estimates of the population of the State as taken by the committee of the legislature above referred to, that the State conventions of both the political parties, which were held a few weeks subsequently, in assigning the representation of the counties, according to their population, exceeded the estimates of the committee of the legislature—the returns of the commissioners being held, by the circumstances, as unworthy of notice.

As an illustration of the gross inaccuracy of the census returns from California, I will give you my estimates of a few counties in the northern part of the State—counties with which I am perfectly familiar, and in which I have resided for the last two years and a half.

The county of Shasta is returned by the commissioners as having a population of 378. There are in this county four settlements of miners, each of which contains a larger population than the commissioners has returned for the whole county.

The population of Shasta county I estimate at 6,000 on the first day of June, 1850.

Trinity county, which, since June, 1850, has been divided, and the county of Klamath set off and organized, contained, at that date, a population of not less than 8,000, and is returned by the commissioner at 1,635.

The population of Butte county is reported incomplete at 3,574. My residence during the year 1849 and the spring of 1850 was in that county. All the Feather river mines are in that county: and I cannot set her population down at less than 10,000.

The enumeration of Yuba, as reported, is so far short of the real number of her population, that I am forced to think there must be some clerical mistake in transferring the figures.

The county of Yuba, in June, 1850, embraced all of the territory now known by the name of Nevada, and in it are the cities of Marysville, Nevada, and Downieville, each of which has a larger population than is returned for the whole county. In addition to these cities, we find in Yuba county, at that time, the towns of Rough and Ready, Year's Valley, Parker's Bar, Rose's Bar, and others, each of which had a population not less than five hundred, and polled, in September, 1850, the largest vote of any county in the State. I estimate the population of Yuba in June, 1850, at 30,000, and in the return of the commissioner it is set down at 9,674.

The county of Sutter, in June, 1850, embracing what is now known as the mining county of Placer, is returned as having a population of 3,441.

This county I represented in the California legislature, and estimate its population at not less than 7,500 in June, 1850.

I give you my estimates of the counties above named from personal observation, in order to show you the gross inaccuracy of the census returns.

I have no doubt that the returns for other counties are equally defective and inaccurate, but I cannot speak from my own knowledge.

In conclusion, however, as much as we have to regret the imperfect returns of the census of California, no blame can be attached to Colonel Johnson, the commissioner, if his apology be true, that he was not supplied with funds sufficient to complete and perfect the work.

It is a great mistake for the administration to suppose that they can procure services to be rendered to the government for a lower consideration than individuals could obtain the same; and this is not the only instance in which the interests of California have suffered on this account.

Respectfully, &c.,

J. M. McCORKLE.

To the JUDICIARY COMMITTEE OF THE SENATE.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1852.

Ordered to be printed.

Mr. BRODHEAD made the following

R E P O R T :

The Committee of Claims, to whom were referred the several memorials of J. & W. McAdams and others, citizens of Boston, R. H. Pease and others, citizens of Albany, and of Levi Brown and others, citizens of Brooklyn, have had the same under consideration, and report :

The memorialists state, that large expenses were incurred by American contributors to the "Industrial Exhibition," held in London during the summer of 1851, in the preparation and transportation of articles of American skill and ingenuity, by which they "excited the admiration of the world," and "merited the title of national benefactors;" that many of the contributors were unable to bear the expenses thus incurred; and as all the European governments paid the expenses of their contributors, they ask that Congress will make an appropriation for the payment of the expenses incurred by citizens of the United States.

The amount of the expenses incurred, and which it is asked may be reimbursed, is not stated; nor is any intimation given that the government authorized, or in any way induced, the expenditure. It was entirely voluntary on the part of those concerned; and although the enterprise was doubtless undertaken from commendable motives, and was prompted by a desire to exhibit to the world the successful results of individual skill and industry, nurtured by the influence of republican institutions, the exhibitors no doubt expected, and have probably realized, directly or collaterally, an adequate return for their labor and expenses. However the fact may be in this respect, the committee are of opinion that Congress is not authorized to appropriate funds from the federal treasury for the promotion of such enterprises.

The adoption of the following resolution is therefore recommended:

Resolved, That the prayer of the petitioners ought not to be granted,

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1852.

Ordered to be printed.

Mr. Rusk made the following

REPORT:

[To accompany bill H. R. No. 148.]

*The Committee on the Post Office and Post Roads, to whom was referred
"An act for the relief of Andrew Smith," have had the same under
consideration, and respectfully report:*

The claimant asks to be indemnified for the loss of two treasury notes, for fifty dollars each, dated August 31, 1836—one, letter B, No. 3464; the other, letter C, No. 3492—said to have been mailed on the 17th day of December, 1847, at Hamburg, Mississippi, in a letter addressed to Andrew Smith, Campbellton, Georgia. The Auditor of the Post Office Department certifies that, "in the account of mails sent from the post office at Hamburg, Mississippi, in the quarter ending the 31st day of December, A. D. 1847, there is an entry under date of the 17th of December, 1847, of one unpaid letter, rated ten cents, mailed for Campbellton, Georgia; and that in the account of mails received at Campbellton, Georgia, in the same quarter, there is no entry of a letter received from said Hamburg, after the said 17th day of December, 1847. (See certificate.) The postmaster at Campbellton also swears that no such letter was ever received at his post office; and Daniel Guice swears that he mailed the letter containing the two treasury notes, on the 18th day of December, A. D. 1847; and that the notes were endorsed to Andrew Smith. The notes were endorsed by "Andrew Smith," and after passing, as would seem, through several hands, were paid at the sub-treasury in the city of New York, on the 6th of July, 1848, in the ordinary course of business, to some person unknown. Andrew Smith swears that the endorsement of his name was a forgery; and that he never did assign any such endorsement, or authorize any person to do it for him.

It is the opinion of your committee, that the only ground upon which the petitioner could justly claim reimbursement of the amount of the treasury notes in question, would be, that the government had been promptly notified and put upon its guard not to pay the same. As appears from the testimony, no such notification was given, and the notes were suffered to circulate from hand to hand, for seven months; after which time they were paid, as above stated, in the regular course of business. So far as appears from the evidence, the sub-treasurer was bound to pay the notes on presentation; no notification having been given, to give rise to suspicion that there was anything unfair in the transaction.

Under these circumstances your committee think that, while the peti-

tioner has not entitled himself to indemnity, in the premises, by due diligence in protecting the government from imposition, it would be establishing a bad precedent to permit the holders of government securities to take advantage of their own wrong. Your committee therefore recommend that the "Act for the relief of Andrew Smith" do not pass.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1852.

Ordered to be printed.

Mr. DOWNS made the following

REPORT:

The Committee on the Judiciary, to whom was referred the joint resolution, S. R. 22, in relation to the number of electoral votes which each State will be entitled to in the Presidential election of 1852, made the following report :

The constitution provides that "each State shall appoint in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the State may be entitled in the Congress."

The act of Congress of March 1st, 1792, passed before any election of President had been held under a new apportionment, gives a construction to this clause of the constitution in these words: "Which electors (of President and Vice President) shall be equal to the number of senators and representatives to which the several States may by law be entitled at the time when the President and Vice President thus to be chosen, should come into office." The new apportionment under the first census, took effect from and after the 3d of March, 1793, (act of 14th April, 1792.) Accordingly, in 1792, in 1812, and in 1832, the States gave a number of electoral votes for President and Vice President, equal to the number of their senators and representatives respectively, from and after the 3d of March, 1793, the 3d of March, 1813, and the 3d of March, 1833; and the act of 1850 having a similar provision to that of 1792, so it must be in the next election next fall. That is, the States will vote under the new, and not under the old apportionment. Under these circumstances, the committee are of opinion that no further legislation on the subject is necessary; and therefore report back the resolution with an amendment, changing it from a joint to a single resolution. This is done by striking the word "joint" out of the title,

IN THE SENATE OF THE UNITED STATES.

MARCH 15, 1852.

Ordered to be printed.

Mr. ATCHISON made the following

REPORT:

[To accompany joint resolution S. No. 25.]

The Committee on Indian Affairs, to whom was referred the petition of John A. Bryan, report :

That they find the facts upon which the petitioner's claim against the government is founded to be as follows: On the 19th of April, 1836, the petitioner was appointed a commissioner, by the Secretary of War, Mr. Cass, to make and carry into effect a treaty with the Wyandot Indians; his duties were prescribed by the Secretary of War, and his compensation fixed at eight dollars per day. The petitioner discharged the duties thus imposed upon him. The duties required and the compensation to be paid are shown in the following letter of the Secretary of War, (marked B.)

The petitioner files his account against the United States, as follows, (marked A.)

There are many letters and affidavits before the committee, tending to show, and do show, that the petitioner did perform the services required. It is also admitted that no compensation has been made for much the greater portion of services rendered by the petitioner.

The committee are of opinion that the petitioner is entitled to the sum of eight dollars per day whilst engaged in the service aforesaid, and no more; and therefore report a resolution to that effect.

A.

The United States in account with John A. Bryan, Dr.

To services rendered in carrying into effect the treaty made by me, as commissioner on the part of the United States, with the chiefs and headmen of the Wyandot nation of Indians, in Ohio, in pursuance of instructions from the War Department, under date of April 23d, 1836:

Employed, after the conclusion of the treaty at Washington, in seeing to the survey of the 40,000 acres of land authorized to be sold under the said treaty, and in providing for the same, agreeably to instructions, 45 days at \$8 per day. [The foregoing services were rendered at sundry times, and on various days, between the 30th day of April, 1836, and the 5th day of December, in same year.].....	\$360 00
To mileage, (400 miles,) from Columbus, Ohio, and returning, at \$8 for every 20 miles.....	320 00
To mileage, to Cincinnati and returning, 280 miles; to Sandusky, 65 miles and returning, same—360 miles in all, at \$8 for every 20 miles.....	144 00
	<hr/> 824 00

B.

WAR DEPARTMENT, *April 19, 1836.*

SIR : Some of the Wyandot chiefs, from the State of Ohio, having arrived here, and being desirous of disposing of a portion of their reservation in that State, I am instructed by the President to request you to act as commissioner in making arrangements for that purpose:

You will, in the first place, ascertain that they have full power to sell. And if they are authorized to dispose of the whole tract, it is very desirable that the whole should be purchased. But if they are unwilling or not authorized to do so, you will then make an arrangement with them for as much as they are disposed to sell. As they have evinced a desire that the whole proceeds should be applied to their own benefit, the President is willing to indulge them in this request; and you are, therefore, authorized to provide for the survey and sale of the tract that may be ceded, upon the same principle that the public lands are surveyed and sold. The proceeds will, in the first instance, be applied to the payment of all expenses incurred in carrying the treaty into effect, and a portion of the residue will be paid over for such objects of public concern as may be designated by them. The balance will be distributed as annuities are divided among them. You will take care that such securities are interposed in the treaty as to insure the faithful application and accountability of the money.

While engaged in these duties you will be allowed eight dollars per day.

Very, &c.,

LEWIS CASS.

TO JOHN A. BRYAN, *Washington.*

IN THE SENATE OF THE UNITED STATES.

MARCH 15, 1852.

Ordered to be printed.

Mr. Downs made the following

REPORT:

[To accompany bill S. No. 286.]

The Committee on Private Land Claims, to whom was referred the petition of Mrs. Maria Taylor, submit the following report :

The petitioner states that she is the lawful owner and proprietor of a certain plantation, situate in the parish of Ascension, State of Louisiana, near its upper limit, on the left bank of the river Mississippi, composed of two tracts: one containing eleven arpents and a half front on the river, by forty arpents in depth; the other, immediately in rear of and adjacent to the front, containing a front line of twelve arpents by forty arpents in depth, with such diverging in the lateral lines as to embrace an area of five hundred acres; that she derived her title to the front tract, first above described, by and through sundry mesne conveyances from the original proprietors, whose possession and property thereof commenced long anterior to the treaty of cession of Louisiana, and which have been continued, uninterrupted by any subsequent owners, to the present time; that the possession and occupancy of the rear tract has also been continued nearly the same length of time, but a confirmation of the title thereto could not be obtained, in consequence of its being included within the limits of a survey of the Houma grant, made by one of the claimants under that grant; that in order to remove this objection, Carlos de Armas, under whom she claims, on the 27th December, 1816, purchased from General Wade Hampton, who had acquired the Houma grant by purchase, all his right and title to the said rear tract, as before described. The committee are satisfied that all the material facts, thus stated by the petitioner, are established by the documents on file, accompanying the petition; and, considering the long and uninterrupted possession and cultivation of the lands claimed, are of opinion that the petitioner is entitled to relief, and accordingly report a bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 15, 1852.

Ordered to be printed.

Mr. FELCH made the following

R E P O R T :

[To accompany bill S. No. 287.]

The Committee on Public Lands, to whom was referred the petition of James Higginbotham, praying to be allowed to correct an entry, respectfully report :

That they refer to the annexed report, made at the last Congress, as containing the facts in the case, and the views entertained by them. They also present a bill, the passage of which they recommend.

IN THE SENATE—March 6, 1852.

The Committee on Public Lands, to whom was referred the petition of James Higginbotham, praying to be allowed to correct an entry of certain bounty land warrants, report as follows :

It appears from the affidavits and other papers filed with the petition, that said Higginbotham was the owner of military bounty land warrants Nos. 18,687 and 20,466, and that he located the same on the south half of section No. 29, in township 81 north, of range 23 west, at the land office in Iowa City. It also appears, to the full satisfaction of the committee, that the location on the land above described was made by mistake, and that it was the intention of the petitioner, at the time of the location, to make an entry of the south half of section 27, instead of the south half of section 29.

The evidence adduced further shows, that on the south half of section 27 there is an improvement which belonged to one Kratzer ; and that the petitioner purchased out his claim thereto, and owned the same at the time of the entry under the bounty land warrants. The entry was made for the petitioner by an agent ; and in preparing the necessary papers for that purpose, the mistake in the number of the section occurred. Two witnesses, who were present at the time, declare, in addition to the statement of the petitioner under oath, that the design was to enter the land on which the improvements were located, and no other. The south half of section 29 not only does not include the petitioner's improvements, but is of little or no value for settlement.

The committee, being fully satisfied that the petitioner intended to enter the land on which his improvements were made, and that he was prevented, by mere mistake, from obtaining the premises, believe that he ought to be allowed to have the error corrected; and they report, herewith, a bill for that purpose.

IN THE SENATE OF THE UNITED STATES.

MARCH 15, 1852.

Ordered to be printed.

Mr. FISH made the following

REPORT:

[To accompany bill S. No. 288.]

The Committee on Naval Affairs, to whom was referred the memorial of Thomas Marston Taylor, asking allowance for treasury notes deposited in the Phoenix Bank, and lost by the failure of that bank, have had the same under consideration, and report :

That the petitioner asks to be relieved from liability for the loss of a portion of the public money intrusted to him as purser in the navy, and which he had on deposit in the Phoenix Bank, at Charlestown, Massachusetts, at the time of its failure, in October, 1842.

It appears by the facts of the case, that at the time the deposits were made, the bank was in good credit; that it had the full confidence of the citizens of Charlestown and Boston, and that no suspicions were entertained as to its solvency; that it had been selected in 1837 as one of the deposit banks of the government; that most of the funds delivered to the pursers at that station were treasury notes, which could not at the time be disposed of for cash without discount and loss to the government, and which discount the pursers were not permitted to make; that in 1842, and previously to the deposit being made in the said bank, Purser Joseph Wilson, then also stationed at Charlestown, had made a representation to the government of the difficulties attending the disposition of the funds intrusted to the pursers at that station, and obtaining permission from the Secretary of the Navy to make an arrangement with the Phoenix Bank for the exchange of treasury notes, so as to make them available at par; that Purser Taylor was informed of this permission given to Purser Wilson, and of the arrangement made by him, in pursuance thereof, with the said bank; and, supposing that the directions of the Secretary were intended for all the pursers at that station intrusted with similar funds, he considered himself authorized to make a similar arrangement with said bank—he having, as he states, no other alternative by which to obtain current funds to discharge the claims against the government; that at the time of the failure of the said bank, in October, 1842, which was sudden and unexpected, it having maintained its credit up to the day of its failure, Purser Taylor had, as appears by the certificate of the receivers of said bank, on deposit therein, the sum of \$12,523 58, of which he has since received from several dividends of the effects of the bank the sum of \$9,392 68, leaving a balance still due of

\$3,130 90. As the deposits made by him were made and credited in his official character as purser of the United States navy, he was advised by counsel, after the failure of the said bank, that it was a question worthy of judicial investigation whether the government, as a privileged creditor, under the act of Congress, might not recover the full amount of the claim, and he accordingly applied and obtained permission from the government to prosecute the claim, in the name of the United States. He employed counsel to bring and conduct the suit; and, after full argument of the case, the court decided that the claim was not within the said act of Congress.

The committee are of opinion that this case is in substance the same as that of Purser Wilson, to whom Congress granted relief by the act of the 13th of June, 1848.

The report of the committee accompanying that bill contains facts and circumstances of importance to this case, and to which the committee beg leave to refer. The only difference in the two cases is, that Purser Taylor had not the direct authority from the government to make the arrangement with the bank that Purser Wilson had. But it appears that they were both performing the duties of pursers simultaneously at the same station; both were furnished with the same kind of funds—treasury notes—of large denominations, and which could not be disposed of without a loss; and that Purser Taylor, before he made the deposite, was informed of the directions given by the Secretary of the Navy to Purser Wilson, and that he acted *bona fide*, believing at the time he made the deposite in the bank that it was for the advantage of the government that he should do so, and that he was acting in accordance with the wishes of the Secretary of the Navy. The committee, therefore, are of opinion that he is entitled to the relief prayed for, and report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

MARCH 15, 1852.

Ordered to be printed.

Mr. DOWNS made the following

REPORT:

The Committee on Private Land Claims, to whom was referred the petition of James and Lucy Perrie, made the following report:

For the reasons stated in the letter from the Commissioner of the General Land Office, the committee are of opinion that the claim ought not to be confirmed, and therefore recommend that the prayer of the petitioner be rejected.

GENERAL LAND OFFICE,
March 6, 1852.

SIR: I have the honor to return herewith the petition of the heirs of James and Lucy Perrie, with the application, in the French language, of Charles Proffit to the governor, to grant him certain islands referred to therein, as "known under the name of Proffit islands," (connu sous le nom des isles de Proffit,) with an order in Spanish, dated 4th March, 1808, from Grand Pré, for the persons cutting wood to evacuate the islands, &c., and a communication with a view to carry out that order, dated 2d March, 1808, from T. S. Sibley.

The object of the petition appears to be to obtain a confirmation of the land once called Brown's islands, (T. 5 S., R. 2 W., Greensburg dist.) in favor of the heirs of James Perrie, in right of Charles Proffit, under the proceedings had by Proffit before the Spanish officers.

In reference to your call for information in the case, I have the honor to state that this claim is entered in Commissioner Cosby's report D, of claims which in his opinion "ought not to be confirmed," (see American State Papers, D. Green's ed., vol. 3, pp. 57 and 62,) as follows:

Claim No. 39, Charles Proffit; original claimant, C. Proffit; nature of claim; order of survey; date of claim, 7th Sept. 1806; quantity claimed, two islands, 560 and 650; where situated, B. Rouge [dist.]; by whom issued; Grand Pré; when surveyed, 8th Oct. 1806; by whom surveyed, J. C. Kneeland.

The claim had its origin after Spain, by the treaty of 1800, at St. Ildefonso, had legally parted with her title to the territory within which the land is situated, and after the province of Louisiana had been ceded to the United States by the French republic; and there is no such showing in the

papers, as, in my opinion, creates any obligation on the part of the government to confirm his title to the land in question.

With great respect, your obedient servant,

J. BUTTERFIELD,
Commissioner.

Hon. S. W. DOWNS,
Chairman of the Committee on Private Land Claims, Senate.

IN THE SENATE OF THE UNITED STATES.

MARCH 15, 1852.
Ordered to be printed.

Mr. FELCH made the following

REPORT:

The Committee on Public Lands, to whom was referred the petition of George W. Dent, in behalf of the occupants and alleged owners of certain lands in townships forty-three and forty-four, in the State of Missouri, respectfully report:

The village of Carondelet claims a large tract of land on the west bank of the Mississippi river, under a grant for a common, confirmed by an "act making further provision for settling the claims to land in the Territory of Missouri," approved June 13, 1812, and two supplemental acts—one approved May 26, 1824, and the other January 27, 1831. Under these acts, it is claimed that the necessary surveys were procured, the location made, and the title perfected according to law.

The lands claimed and occupied by the persons in whose behalf this petition is presented, are within the surveyed limits of the above-mentioned tract. From the maps and papers before the committee, there appear to be within these limits seven tracts of land claimed as private property, and confirmed to individuals by acts of Congress. The first, to Julian Chouquette, was confirmed in 1810, prior to the confirmation of the commons to the village of Carondelet, and the committee are not informed that any question of conflict of title is made in regard to it. The other six were confirmed to Gabriel Constant, Gabriel Cerre, Pierre Delor, J. B. Matigny, Sophia Bolage, and J. B. Deschamp, respectively; the first of the number by act of Congress, approved April 29, 1816, and the others by act of July 4, 1836. The tracts of land embraced in these sessions, it is alleged in the petition, are regularly surveyed by the United States, and possessed, cultivated and occupied by the confirmees or their legal representatives.

The petitioners claim, for reasons not necessary to be here examined, that the limits of the commons of Carondelet, as surveyed and now claimed by that village, are much more broad than authorized by the act of 1812, by which their confirmation is sustained, and that, if reduced to their proper and legal limits, the lands conceded to the above-named individuals would not fall within their boundary, and the conflict of title between them, under the act of confirmation, would cease to exist. And they desire of Congress such legislative action as will restrict the limits of the commons within more narrow bounds, and release a portion of the premises from the claim of the village; that the land thus excluded from the commons may be treated as

other parts of the public domain, except so far as it has been conceded to these private owners and confirmees, whose title would thereby be re-affirmed.

The question as to the just limits of the tract of land confirmed as the commons of Carondelet, must be decided by the judicial and not by the legislative tribunals of the country. And, in the judgment of the committee, under the circumstances presented in the papers before them, it would not be expedient, at this time, to attempt to disregard the claim of the village of Carondelet to any portion of the land within the surveyed limits, and, regarding it as unceded public domain, proceed to make sale of it. If in fact the whole be embraced within the grant of the commons, the United States can now neither divest the village of its title, nor convey title to another. It is understood that litigation has already been commenced, and it is manifest from the papers presented that such litigation from other quarters will soon arise, which will necessarily present the question of the effect of the grant of commons and the extent of the land embraced within the confirmation. If it should be judicially determined that any portion of the tract now claimed under this grant is not embraced within it, it will then be the duty of the government to take further action for the disposition of such portions of it as are not covered by the private grants. Until such final judicial action shall be had, or some further development in regard to the rights of parties be exhibited, there would be a manifest impropriety, in the view of the committee, in the action suggested.

In regard to the conflicting titles to the land held by the confirmees above mentioned, there would seem to be on the part of Congress—if no other objection was presented—no power to take any action which could change the position of the parties relative to their respective titles. The title to the commons, as well as the extent of the tract granted, must be determined under the act of 1812, and the acts supplementary thereto, and no restriction or limitation now imposed by statute could curtail or diminish rights vested under those laws. If the lands held under the private concessions are not within the legal limits of the grant of the commons, that fact, presented on a judicial trial, would defeat the claim of the village to them. Or if, for any cause, the grant of the commons can be invalidated, or an anterior and paramount title shown in the present occupants, the title of the latter must prevail. But the rights of the parties, whatever they are, are now fixed under the laws by virtue of which they respectively claim, and the various questions suggested in the petition and papers before the committee are proper subjects for judicial, and not for legislative action. No confirmatory act, in behalf of these confirmees, could add anything to their title, for they already have, under the former confirmatory laws, all that the United States could give. The question of conflict between the respective claimants must be referred to the judicial tribunals; and, until some decision on the subject shall indicate more clearly the legal rights of the parties interested, it is, in the opinion of the committee, inexpedient to legislate in the manner solicited by the petitioner. The following resolution is therefore recommended:

Resolved, That the committee be discharged from further consideration of the subject.

GENERAL LAND OFFICE,
March 4, 1852.

SIR: I have the honor to return herewith, the petition of George W. Dent, referring to certain private land claims which fall within the limits of a survey executed in 1834, by Joseph C. Brown, for what are known as the "*Carondelet commons*" in Missouri, and asking of Congress, in behalf of certain parties, "that the land included in said survey of Brown may be disposed of agreeable to the views and recommendation of Solicitor McRoberts, contained in his report No. 300, and concurred in by the Commissioner of the General Land Office."

Pursuant to your call for information in the matter, I beg leave to present the following:

1. Proceedings in regard to the "*Carondelet commons*."

The "*inhabitants of the village of Vide Poche, or Carondelet*," presented their claim to the old board of commissioners for the adjudication of titles in the Missouri Territory, whose report on it will be found printed in the 2d volume of American State Papers, Gales & Seaton's edition, volume 2, page 672.

According to that report, the inhabitants then claimed 6,000 arpens as a common; produced to the board their notice of claim to the recorder, dated 7th June, 1808; a petition dated 6th December, 1796, from one Gamache to Lieutenant Governor Trudeau, for a grant below the village; and the decree thereon, dated 7th December, 1796, of the lieutenant governor, stating "that the land demanded is within the limits of land reserved for the purpose of furnishing wood necessary for the use of the village of Carondelet;" and that the demand by Gamache could not be admitted, nor any other concession be granted, in the direction of a line taken from the end of the field-lots of the village, and running parallel with the Mississippi, further down said river, one hundred and fifty arpens.

The testimony taken, in 1808, of Auguste Chouteau, senior, was before the said board, in which it is stated that he "knows the inhabitants of Vide Poche, since the year 1770, have made use of the land lying below the field lots and village of Vide Poche along the Mississippi, as their common, and ever since that time have taken therefrom their fencing and fuel, but does not know the extent of the claim," &c.; and Jean Baptiste Provenchere, whose testimony, also taken in 1808, was before the said board, says "that the village of Carondelet was, to his knowledge, established at least forty years ago," &c.

On the claim of the inhabitants, as then presented, a majority of the commissioners on the 2d January, 1812, expressed the opinion that "this claim ought not to be granted; Clement B. Penrose, commissioner, voting for a confirmation thereof, under the usages and customs of the Spanish government."

Subsequently, however, to wit, on the 20th March, 1812, Mr. Penrose submitted to Mr. Gallatin, then Secretary of the Treasury, a classification of certain claims, in order that Congress might "pass some general law on the subject;" and in that communication, his ninth class embraced "claims for commons, viz: St. Charles, St. Louis, and Carondelet," which he declared "ought to be confirmed;" stating that "they would have been under every practice we have seen, had the Spanish government continued the possession," &c. (See 2d volume Gales & Seaton's State Papers, Public Lands, page 448.)

Thomas F. Riddick, who had been clerk to the board, furnished on the

26th March, 1812, to the chairman of the Committee on Public Lands, a list of claims, in which there was a forty-ninth class, embracing "villages, commons, common-fields, and lands adjacent, given to the inhabitants individually for cultivation, possessed prior to the 20th December, 1803;" and in regard to these he stated, that "if confirmed at once by the outer lines of a survey to be made by the principal deputy, would give general satisfaction, and save the United States a deal of useless investigation into subjects that are merely matters of individual dispute;" that "the United States can claim no rights over the same, except a few solitary village lots and inconsiderable vacant spots, of little value, which might be given to the inhabitants for the support of schools;" and he then specifies the several villages established prior to 20th December, 1803, among which is "Carondelet."

Shortly after these communications, Congress passed an act, which was approved 13th June, 1812, "making further provision for settling the claims to land in the Territory of Missouri," (U. S. Statutes at Large, vol. 2, page 748, chap. 99,) declaring "that the rights, titles, and claims to town or village lots, out-lots, common-field lots, and commons, in, adjoining and belonging to" several towns or villages, among which Carondelet is specified, "which lots have been inhabited, cultivated or possessed, prior to the 20th December, 1803, shall be and the same are hereby confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several right or rights in common thereto;" with a *proviso*, not to affect previous confirmations by the board of commissioners; and declaring, further, that "it shall be the duty of the principal deputy surveyor for the said Territory, as soon as may be, to survey, or cause to be surveyed and marked, (where the same has not already been done according to law,) the out-boundaries of the said several towns or villages, so as to include the out-lots, common-field lots, and commons, thereto respectively belonging; and he shall make out plats of the surveys, which he shall transmit to the surveyor general, who shall forward copies of the said plats to the Commissioner of the General Land Office," &c.

Pursuant to this law, an actual survey was made by Elias Rector, United States deputy surveyor for the "commons of Carondelet."

Surveyor General Milburn has certified, under date April 15, 1840, (plat D,) that the field-notes of this survey are "without date; but the survey was executed and the notes taken before the year 1817;" that "they were, to his knowledge, on file in the surveyor's office in the fore-part of that year, and have always since that time been acted upon as the official notes and survey of said common, as supposed to be confirmed by the act of Congress of the 13th June, 1812."

On the 26th May, 1824, Congress passed a supplemental act, (U. S. Statutes at Large, vol. 4, page 65, chap. 184,) requiring individual owners or claimants of lots confirmed by the act of 1812 to designate their lots within eighteen months, by proving them up before the recorder, so as to enable the surveyor general to distinguish the private from the vacant lots; and the 2d section of the said act of 26th May, 1824, goes on to prescribe certain duties for the surveyor general; among which is, "also to survey and designate, so soon after the passage of this act as may be, the commons belonging to the said towns and villages, according to their respective claims and confirmations, under the said act of Congress, where the same has not already been done."

On the 27th January, 1831, Congress passed a further law, (same vol.

Statutes, page 435, chap. 12,) supplemental to the act of 1812, by which the United States relinquished to the inhabitants of several towns or villages, among which Carondelet is mentioned, all the right, title and interest of the United States in and to the town or village lots, out-lots, common-field lots, and commons, in, adjoining, and belonging to the said towns or villages, confirmed to them by the act of 13th June, 1812, to be held "in full property, according to their several rights therein, to be regulated or disposed of for the use of the inhabitants, according to the laws of the State of Missouri."

Such are the confirmatory laws which Congress have enacted in regard to the commons, &c. Let us now recur to the proceedings relative to the survey for the "commons of Carondelet." After Lieutenant Governor Trudeau had rendered his decree, dated December 7, 1796, declaring that the land asked for by Gamache is included in that which has been reserved to furnish wood necessary to the village of Carondelet, and that the demand of Gamache, "as well as all concessions granted in the direction of the line beginning at the end of the lands of said village, and running parallel to the Mississippi," 150 arpens "lower down," could not be admitted.

Antoine Souldard, the Spanish surveyor general, was called upon to act in the matter; Souldard certifies, under date 25th December, 1797, that on the 21st of that month, in virtue of an order from the lieutenant governor to the commandant of the village, enjoining the inhabitants to make known the line of a tract, "conceded to them on the 7th December, 1796," the inhabitants, in presence of their commandant, agreed upon causing their line to be drawn from the last bound place, at the extremity of the depth of their lands, which had been formerly surveyed by Mr. P. Chouteau, in virtue of an order from the lieutenant governor. He further certifies, that "having taken the bearing course of these same lands," he found "they ran S. 28° W;" that he "followed this same course 23 arpens 3½ poles," at which distance "he intersected the river Des Peres," and there, it appears, he stopped. Souldard, under date 18th February, 1806, again certifies that the inhabitants of Carondelet requested him to measure for them, or cause to be measured, by one of his deputies, "a portion of land which was granted to them as a common, by" Trudeau; that the land was to be surveyed by Cousin, who went there for that purpose, but that the survey was prevented, by reason of his instruments being out of order, &c. It seems that in the survey executed by Rector, the United States deputy, "before the year 1817," he had the line of Souldard in view, as far as it was run by him, and also the distance of 150 arpens, mentioned by Trudeau, for we find that he ran the western line of the common, beginning on the north, at the southwest corner of the common-field, and going from thence south 36° west, variation of the needle, according to Brown's return, being 8° east, a distance of 437 chains 50 links, the length which he gives in his survey as the western line, being equal to 150 arpens; and from thence he ran south 54° east, to the Mississippi.

This survey was made by Rector, before the survey of the adjoining public lands, and the public surveys were not then properly connected therewith.

We find, therefore, that on the 10th February, 1834, E. T. Laughaur, United States surveyor, issued instructions to Joseph C. Brown, deputy surveyor, sending him "a copy of the field-notes of the survey of the land claimed by the inhabitants of Carondelet commons, but which is not suffi-

ciently connected with the adjoining public and private surveys," and authorizing him to "retrace the lines, and re-establish the corners of said survey, and to connect it with the said adjoining surveys, by establishing the proper corners at the intersection of the several lines thereof, with the lines of other claims, and with the lines of the public surveys," and to "measure, and state in" his "field-notes, the course and distance therefrom, on the lines so intersected, to the nearest corner outside the commons;" and directing that "when the courses described in the within copy of the field-notes of the survey of the commons can be found and properly identified," he would run to them; and that "when they cannot be so found and identified," he would run "the proper course and distance, or to the intersection of the natural or artificial boundary called for."

Accordingly, in March, 1834, Joseph C. Brown, United States deputy, made his return of survey, first No. 2965, and then No. 3102, of the commons of Carondelet. Surveyor General Milburn certifies, under date 15th April, 1840, that "Elias Rector reports the west boundary of the common to be 437.50 chains, which is equal to 150 arpens, whilst the said line, according to Mr. Brown's operations, as reported on plat X, is 473.17 chains, which exceeds the 150 arpens by 35.67 chains, or something more than 12 arpens;" that the copy of the instructions to Brown "shows that he was not required to run the distance of 150 arpens on the west boundary, but to connect the lines of the common, as already surveyed, with the adjoining public and private surveys; and if the southwest corner could not be found, to re-establish it at the intersection of the southern and western boundary lines;" that the "southwest corner, and the lower corner on the river, also the western and southern boundary lines, as surveyed by Elias Rector, were easily found and identified by Mr. Brown."

I now beg leave to refer to the proceedings had in opposition to the survey by Joseph C. Brown, in 1834, of the Carondelet commons.

By a communication dated 22d June, 1839, the Secretary of War called the attention of this office to a letter of the 18th of the previous month, from A. L. Magennis, United States attorney, relative to the Carondelet commons, and requested that measures be taken to sell the land included within certain lines, "from the river des Peres south, claimed as commons by the village of Carondelet, but believed to belong to the United States," and stating that "the military reservation desired for the United States, round the fort at Jefferson barracks, will be designated whenever the land office is prepared to sell the residue of this tract of land." This communication from the Secretary of War, with an argument from Mr. Magennis, relative to the extent of the commons, was referred to the Solicitor of this office, for a report.

Solicitor Birchard accordingly made a report, No. 244, dated August 6, 1839, in which he expressed his belief "that Brown's survey includes several thousand acres, to which the village of Carondelet has no legal or equitable title," &c., and stated that "if such is the fact, there is no objection to a survey and sale, as public land, of all that part of the tract not needed for military purposes, or covered by private claims;" remarking that "indeed that is the proper course to pursue," but advising that instructions be given to the surveyor general, "to have the survey executed as required by law, viz: to retrace the exterior of the village, including the village lots, common-field and out-lots, and commons, giving the villagers the same lines which they had in 1803, and no more, unless prior to

the act of 1812 the corporate limits had been fixed and extended beyond the limits of 1803, and after laying down the private claims (referring to those falling within the lines of Brown's survey,) "to section and subdivided the residue, and return the official plats;" and stating that "the surveyor general should refer to the ancient maps and title papers in his and the recorder's offices, and from them ascertain what were the exterior lines of the just claims in 1803," &c. On the 24th September, 1839, Commissioner Whitcomb sent to the surveyor general, at St. Louis, a copy of this report of the Solicitor, concurred in it, and directed a careful examination of the whole matter, in order to determine the limits of the commons to which the villagers are entitled, and directed a survey accordingly, that such lands as may not be found within the limits of the commons, or covered by private claims, may be surveyed as public lands; and the Commissioner then called on the surveyor general for a report of the proceedings.

On the 15th April, 1840, surveyor general Milburn made a voluminous report, with accompanying documents, in which he examined the case in various aspects, combatted the arguments of Solicitor Birchard, and held, in conclusion, as follows:

"From the facts here presented, and the inferences I have drawn therefrom, you will see that my constructions of the law are distinctly in favor of the village. to the extent of 150 arpens from the southwest corner of the field lands: and were there no controlling circumstances, I would not hesitate to run the west boundary as represented by the black dotted line *c d*, in the plat X, which is 150 arpens parallel to the general course of the Mississippi: but when I take into consideration the operation of Soulard, in running the line *c e* north of the river des Peres, and the Spanish calls for the limits and commons of Carondelet, in the claims of Alvarez and Valle, I am led to believe that it was the intention of the Spanish government to prolong the line *c e* to *a*, which is about parallel to the river for some distance; and that as the act of Congress had in view the carrying out and fulfilling this intention of the Spanish government, as claimed before the board, it ought now to be adhered to, by adopting the line *c a*."

Herewith I enclose the plat X, on which the lines referred to by the surveyor general are represented. Upon the receipt of the aforesaid report of the 15th April, 1840, from the surveyor general, the matter was again referred to the Solicitor of this office, then Mr. McRoberts, who made a report thereon, No. 300, dated October 22, 1840, in which he arrived at the conclusion indicated in the following:

"From a full examination of the subject, I have come to the conclusion that the lands included in the survey of the commons were not granted by the Spanish government to the inhabitants of Carondelet, for the purpose contemplated, nor for any other purpose; and that the endorsement of Lieutenant Governor Trudeau, upon Gamache's petition, was not a grant of the land, and can only be treated as an *intention to reserve* a part of the lands south of the river—in his own words, 'to furnish wood necessary to the village of Carondelet;' and that the fee-simple in the soil did not, and was not intended to pass out of the Spanish crown; and that the title to the land was in the crown at the date of the cession, and as such passed to the United States.

"2d. That the act of Congress of June 13, 1812, did not confirm the land, as surveyed by Mr. Rector, to the village of Carondelet, nor was it effected by the act of Congress of 27th January, 1831. I, however, believe, that in good faith to the citizens of Carondelet, and in fulfillment of what they were led to believe was the intention of Lieutenant Governor Trudeau to do in the premises, Congress will make a grant of some portion of the lands for the purpose contemplated.

"I therefore advise that the tract of land beginning on the Mississippi, at the figure *b*, laid down upon plat X, and near the northeast corner of Martigny's survey, thence with the black dotted line to *d*, thence with said line to the river des Peres, and up the river to the line of Alvarez's survey, and across the river to letter *c*, and from said letter *c* to *e*, and on to the river with the present survey, be reserved for the future action of Congress."

He states, further, the estimated quantity within these limits is about 7,700

acres; that "within this tract is also situated the Jefferson barracks, in Missouri;" that "by making this reserve, Congress can grant the 6,000 arpens, which is all the inhabitants claimed," = "5,104 ³⁰/₁₀₀ acres, excluding all private claims to the village of Carondelet for a common, or in such manner as may be deemed proper, and can retain, of the public land, 1,702 acres as a site for Jefferson barracks, or for any disposition that may be judged expedient;" and he further recommended that the residue of the land, of several thousand acres, in Rector's and Brown's survey, "be surveyed and sold."

On the 20th January, 1841, Commissioner Whitcomb, concurring in Solicitor McRoberts's report, addressed instructions to surveyor general Milburn, in order that the views expressed in said report might be carried out; and under same date despatched a letter to the Secretary of the Treasury, in order that the matter might be laid before Congress, for such action as might be deemed proper in the way of making a grant to Carondelet.

Under date of the 11th July, 1845, the matter was called up by letter from Mr. A. Kayser, seeking to have the aforesaid instructions carried out by the surveying department. Commissioner Shields, in answer, on September 1, 1845, informed him that he had "carefully examined the claim, and" had "come to the conclusion that it would be inexpedient at present to direct the survey of those lands, nor until the further action by Congress on the subject." And under the same date, Commissioner Shields wrote a letter to surveyor general Conway, stating that Mr. Kayser had "applied for instructions to be sent to" the surveyor general, "for the survey of a part of the Carondelet commons, as directed in 1841, which was refused by letter of this date," a copy of which he sent Mr. Conway.

Subsequently the case was called up by the Hon. Mr. Tibbatts, at the instance of Mr. Hockaday. And on the 14th February, 1846, Commissioner Shields, in a communication to Mr. Tibbatts, held as follows:

"I deem it inexpedient to interfere in any manner with the survey of that common, as originally made by Elias Rector prior to 1817, and retraced by Joseph C. Brown, deputy surveyor, in March, 1834, more especially as the surveyor general, in a certificate to a plat of this common, dated 15th April, 1840, has reported to this office, that under an act of the legislature of the State of Missouri, passed in pursuance of the act of Congress approved 27th January, 1831, the corporate authorities of the town of Carondelet laid off into small tracts the land within Brown's survey of the Carondelet common, (except a portion around Jefferson barracks,) and disposed of the same, or the greater part thereof, to private individuals; that the lands within Rector's and Brown's survey are not subject to pre-emption, or ordinary entries, as supposed by Mr. Hockaday, they having been reserved to satisfy this claim of the town of Carondelet;" that "this office was not disposed to trouble Congress with the matter, supposing that it would be brought before that body by the parties interested; but as Mr. Hockaday has requested prompt action, I would recommend, in view of all the facts, that the claim of the town of Carondelet to the whole common, as surveyed by Joseph C. Brown in 1834, be confirmed, reserving as much as may be necessary for the United States post at Jefferson barracks, and all valid interferences."

The attention of this office was again drawn to the matter by a petition dated 1st June, 1846, from U. Schük and others; and on the 17th of that month, acting Commissioner Piper acknowledged the receipt of that petition "relative to the lands reserved to satisfy the claim of the citizens of Carondelet, as a common to that town," and stated that "when that land is brought into market, should the claim for common not be confirmed, due regard will be had to the interests of the settlers, under the laws which may then be in force," and that it was "not in the power of this office to comply with the last request in this petition, as these lands are not subject to

pre-emption, and therefore the land officers at St. Louis cannot be instructed to receive, file, or retain the pre-emption declarations of the settlers on them."

Subsequently, in 1846, a petition was received from Joseph Le Blond and others, inhabitants of the town of Carondelet, praying that the common claimed by them might be surveyed, as established and recognised by surveyor general Rector and others; and under date of December 9, 1846, acting Commissioner Piper, after adverting to the aforesaid opinion of Solicitor McRoberts, No. 300, and of the instructions from this office of 20th January, 1841, stated as follows: that "on the 11th July, 1845," Mr. Kayser, as attorney, &c., "applied for immediate action in this case, in accordance with the opinion of the Solicitor above quoted, in part as modified by the decision of the supreme court of Missouri, at the July term of 1844, in the case of *Dent vs. Bingham*;" that "on a full and thorough examination of the whole matter, this office decided that it would be inexpedient to direct the survey of those lands until further action by Congress on the subject, and the surveyor general and Mr. Kayser were so advised on the 1st September, 1845;" that "this decision, which has ever since been adhered to, will enable the town of Carondelet, and the settlers on this common, to present their respective claims to Congress, who can best determine the meaning of the act of 27th January, 1831, and the extent of the grant to the town contemplated thereby."

On the 19th of August, 1848, inquiry having been made in the matter by W. C. Jones, esq., a letter was written to him, dated August 22, 1848, by Commissioner Young, stating that there was then no application pending in this office for a confirmation of Brown's survey; and further, that on the 14th of February, 1846, this office decided that "it would be inexpedient to interfere in any manner with that survey, and that the lands within it are not subject to pre-emption or ordinary entry, having been reserved to satisfy the claim of the town;" that, "notwithstanding this decision, the land officers, it is stated, have allowed entries within that survey; and Wilson Primm, esq., in a letter of the 9th instant, requested that all such entries might be cancelled;" "that in view of the decision above mentioned, this request will be complied with; but the question as to the extent of the grant for a common, will be left for the decision of Congress." And on the 24th August, 1848, Commissioner Young, in answer to Mr. Primm, stated, "that under the decision of this office, the lands within the commons of Carondelet, as represented by the survey made by Joseph C. Brown, deputy surveyor, in March, 1834, are not regarded as subject to pre-emption or ordinary entry, but as reserved to satisfy the claim of the town of Carondelet, under the acts of 13th June, 1812, and 26th May, 1824;" that "hence all such entries will be cancelled, but the question of the extent of that claim will be left to the decision of Congress;" that "the land officers at St. Louis were that day instructed to report the reasons that induced them to permit entries within the limits of Brown's survey, and also to report all such entries, that they may be cancelled;" and that "the same principle will apply to the land supposed to be vacant between the commons of Carondelet and those of St. Louis." Under date October 30, 1851, the surveyor general at St. Louis transmitted to this office a letter from Mr. Geyer and Mr. Casselberry, relative to a survey on the northern part of the Carondelet common; and on the 29th November, 1851, the Hon. Mr. Darby advised this office that he had received a letter from his

constituents about a *new* survey for Carondelet, and desired that no action be taken until they could be heard.

Under date December 6, 1851, the surveyor general transmitted to us a letter from Mr. Casselberry, with depositions relative to the dividing line (on the north) between Carondelet and St. Louis. By letter of 22d December, 1851, Mr. Kennett, mayor of St. Louis, asked that no action be had on application for a new survey, (referring to the north line,) without St. Louis being heard in opposition. On the 6th January, 1852, the mayor of St. Louis sent a resolution protesting against the disturbing of the survey for St. Louis. On the 30th January, 1852, Messrs. Geyer, Primm, and Williams addressed a communication to this office, the first two in support of Brown's survey, and also for an extension by a new survey on the north line of Brown, for Carondelet, to the "Sugar Loaf," and the third (Mr. Williams) for the claimants south of the river des Peres, in Brown's survey. On the next day, copies of that application were furnished to Mr. McPherson and Mr. George W. Dent, of St. Louis, pursuant to requests from them respectively. On the 2d February, 1852, A. R. Corbin, esq., entered a protest in behalf of St. Louis, in regard to the new survey applied for on the north line of Brown's survey. On the 2d February, 1852, Wilson Primm, esq., filed several papers in regard to the controversy between St. Louis and Carondelet, as to the north line claimed by the latter. On the 3d February, 1852, the Hon. Mr. Darby transmitted to this office a copy of the St. Louis resolutions, about the controversy relative to the new survey claimed north of Brown's line for Carondelet. On the 5th February, 1852, Mr. McPherson, attorney, applied for delay of decision in regard to the controversy between Carondelet and St. Louis, relative to the new survey claimed by the former on the north of Brown's line. On the 7th February, 1852, the Hon. Mr. Darby sent us a letter from the mayor of Carondelet, dated 24th January, 1852, stating that resolutions had passed "the city of Carondelet to facilitate the settlement of the boundary lines of the common south of the river des Peres;" that "said resolutions contain a clause of reservation to 'respect' all private claims or surveys within said boundaries;" that Mr. F. Dent had "given his assent to the passage of a bill in Congress containing the above reserving clause," &c. On the 7th February, 1852, George W. Dent, esq., protested against the recognition of Brown's survey, referring to Solicitor's reports, and asking, if the case is again to be adjudicated, for further time. On the 9th February, 1852, Wilson Primm, esq., filed an argument in support of Brown's survey. On the 12th February, 1852, Willis L. Williams, esq., filed a further argument in support of said survey. On 15th February, 1852, George W. Dent asked that the matter be laid over for the action of Congress. On the 17th February, 1852, notice was sent to Mr. Dent from this office, in order that he might file any argument or showing he might desire. On the 20th February, 1852, Mr. Dent filed a copy of the resolutions of Carondelet, to the effect mentioned by the mayor of the city in the letter which was communicated by Mr. Darby. On the 26th February, 1852, Mr. Dent presented several points in support of certain private claims within the limits of Brown's survey, and against the claim of Carondelet south of des Peres, and filed an agreement between Carondelet and Anthony H. Menkins, respecting St. Louis conflict. On the 27th February, 1852, Mr. Dent asked for further time, if the decision of the Commissioner will interfere with the action of his predecessors on the application of Messrs. Geyer, Primm, and

Williams. On the same day the Commissioner called on Mr. Dent for any further showing by Monday next, (March 1.) On the 28th February, 1852, Mr. Dent protests against the office doing more than furnishing the facts to Congress—on the same day was advised by Commissioner that he would make a report, and claimed the right, if in his judgment it was proper, to express his views on any question that might arise in the case. On the 1st March, 1852, Mr. Dent asks that the *facts* be communicated to Congress, and that if the office determines to express an opinion in a case long since closed, he wants time to be heard on it.

The claims alluded to by Mr. Dent in his petition, as being within the survey of Brown in 1834, for the Carondelet commons, are the following :

1. The claim of Julien Chouquette, for 650 acres, founded on ancient possession, &c., and not on written or Spanish title, was confirmed in 1810, pursuant to the act of 3d March, 1807, (see American State Papers, Gales & Seaton's edition, volume 2, page 718,) and patented in 1823, (conf. cert., 904.)
2. Claim of Gabriel Constant, jr., to 35 arpens, north of des Peres, founded on a concession of Lieutenant Governor Trudeau, on September 4th, 1796, surveyed by Soulard 15th April, 1796, recommended for confirmation by recorder in 1816, and confirmed by the act of 29th April, 1816. (See State Papers, Gales & Seaton's edition, volume 3, page 338.)
3. The claim of Gabriel Cerré, for 400 arpens, (decision No. 60,) founded on concession from Manuel Perez, on March 15, 1789, upon condition of being improved within a year, rejected by board in 1811, in 1833 recommended for confirmation, and confirmed by the act of 4th July, 1836. (U. S. Statutes, volume 5, page 126, chapter 351—State Papers, D. Green's edition, volume 5, page 772.)
4. Claim of Pierre De Lor for 400 arpens, founded on an order dated 6th December, 1796, from lieutenant governor, confirmed by act of 4th July, 1836. (Decision 121 of late board. D. Green's edition State Papers, volume 5, page 824.)
5. Claim of J. B. Matigny for 480 arpens, (decision 170 of the late board,) founded on a concession of 25th April, 1783, from Lieutenant Governor Cruzat, confirmed by act 4th July, 1836. (Doc. No. 59, H. Reps. 1st session 24th Congress, No. 170.)
6. Claim of Sophia Bolaye for 150 arpens (decision No. 279) founded on an order of 3d June, 1796, from Lieutenant Governor Trudeau, and confirmed by act of 4th July, 1836, (Senate Doc. 16, 1st sess. 24th Congress, p. 40.)
7. According to the diagram accompanying Mr. Dent's petition, there is a 7th claim within the limits of Brown's survey, viz: claim for 160 arpens of Jean Baptiste Deschamps, (adjoining Matigny's) founded on a concession of 25th May, 1783, from Cruzat,—(Decision No. 144, of the late board, confirmed by the act of 4th July, 1836; Doc. No. 59, H. Reps., 1st sess. 24th Congress, p. 86.)
8. Besides the foregoing, there is a claim of one Gamache for 6×40 arpens in the extreme north of Brown's survey, which claim, it is stated, was proven up before the recorder under the act of 1824; but not being included in his list of 1828, has been held by this office as not confirmed; but an appeal was taken in March, 1850.
9. There is also within the limits of Brown's survey, a United States military reservation of 1,702 acres for Jefferson barracks.

Now it will be observed that the object of the applications and arguments in behalf of the "commons of Carondelet," appears to be, *first*, to effect the full recognition of the claim of the "Carondelet commons" to the lands within the limits of Brown's survey, of 1834, a release to the United States of the military reserve being proposed; and, *second*, that a new survey on the north line of Brown be made for Carondelet to the Sugar Loaf, which would conflict with the "St. Louis commons." Application, however, having been made by one of the counsel for St. Louis, for the decision on the *second* point to be deferred until May next, and that not being resisted, the said question of new survey on the north of Brown's line is accordingly laid over. On the other hand George W. Dent, in behalf of his father as owner of the 3d and 6th claim, (Cerré and Bolaye) and in behalf of the other parties south of the river des Peres, protests against the recognition of Brown's line as prejudicial to the interests of the private claims within its limits.

The first claim is a confirmation prior to the first law (of 1812) confirming the commons, and is therefore not a conflict, being accepted by the terms of the law. The second claim is north of des Peres, and a patent is ordered by the confirmatory act of 1816, subject, of course, to any valid adverse right. In the other five cases, the confirmatory act of 4th July, 1836, does not order patents.

"That a grant may be made by a law, as well as a patent pursuant to a law, is undoubted, (6 Cr. 128;) and a confirmation by a law is as fully, to all intents and purposes, a grant, as if it contained in terms a grant de novo."—(12th Peters's Supreme Court Reports, p. 454.)

Irrespective of any question of limits, I hold the military reserve in which Jefferson barracks is situated to be the property of the United States, not only according to the spirit and intent of the acts of 13th June, 1812, and 26th May, 1824, (United States Statutes, vol. 2, p. 748; vol. 4, p. 65,) contemplating a military reservation by the President for military purposes, but also in virtue of the rights the United States possess as the successor of Spain to make such a reserve.—(See case of Colin Mitchell and others, Peters's Reports of the Supreme Court, vol. 15, p. 52.)

I now beg leave to recur to the history as presented in the foregoing, and to the references there given in relation to the origin and proceedings under the Spanish government respecting the Carondelet common, and to the proceedings by the board of commissioners in 1812; to the action by Messrs. Penrose and Reddick in that year; to the confirmatory acts of 13th June, 1812, 26th May, 1824, 27th January, 1831—(United States Statutes, vol. 2, p. 748; vol. 4, pp. 65, 435;) to the report of Solicitor Birchard against the Carondelet claim; to the report of surveyor general Milburn in favor of it, to be extended from Soulard's line north of the des Peres, a distance of 150 lineal arpens south of the river, according to Trudeau's order of reservation; to the report of Solicitor McRoberts against the validity of the claim south of the river des Peres, and to his proposition to hold a certain extent of land south of the river in reservation, so that Congress could confirm it to Carondelet, subject to all conflicting private claims, and sell the residue; to the concurrence in this of Commissioner Whitcomb, and his instructions to carry it out as communicated in January, 1841, to the surveyor general; to the circumstance that those instructions were never executed; to the fact that upon a careful examination, on review, in September, 1845, Commissioner Shields refused to order the survey as directed in 1841, nor until the further action of Congress; to his declaring in 1846 that he would recommend, in view of all the facts, "that the claim of Carondelet to the whole common as surveyed" by Brown in 1834, "be confirmed, reserving so much as may be necessary and proper for the United States post at Jefferson barracks and all valid interferences;" to the fact that the subsequent action of acting Commissioner Piper, in 1846, and Commissioner Young in 1848, treated the lands within the survey of Brown as held in reservation to satisfy the claim of Carondelet, subject to the action of Congress and to interfering valid rights.

1. In view, then, of what has been done by Commissioner Shields on review, and by acting Commissioner Piper, and by Commissioner Young, I hold it settled by them that we are to treat Brown's survey of 1834 as showing the lands which this office must hold in reservation, to satisfy the claim of the commons of Carondelet, subject to any adverse private rights and to the military reservation, and also subject to any further action which Congress may be pleased to take in the way of passing an explanatory law,

either for limiting the extent to a specific and reduced quantity, or confirming all the land in said survey, with special protection, if deemed necessary, of adverse claims.

2. That in case Congress shall consider that there is obscurity, ambiguity or doubt in the matter, as the case now stands, under the evidence of the Carondelet commons claim, and acts of confirmation of 1812, 1824, and 1831, and such ambiguity or doubt should be removed by an explanatory act, such act would be a rule and order upon this office, by which we would of course be governed in any future executive action requisite in the premises in regard to the disposal of the land.

3. But, in case no such supplemental law should be passed, this office would not feel at liberty to disturb or interfere with the survey of Brown, in 1834; first, because we should feel bound to be governed by the aforesaid action on review of Commissioner Shields, and of acting Commissioner Piper, and Commissioner Young; and for the reason that the survey which was made by Rector, under the act of 13th June, 1812, and retraced by Brown, under the act of 26th May, 1824, were made by the officers who were specially designated by law for that duty, and who derived their power from those acts, and from the law of 29th April, 1816; (United States Statutes, vol. 3, p. 325, chap. 151;) and in that case we should consider any conflict or right within those boundaries, a question properly determinable by the judiciary.

Herewith I have the honor to send a copy (Aa) of my reply of this date to Messrs. Geyer, Primm, and Williams, in reference to their application in the Carondelet case. Since the foregoing report was made up, Mr. Primm has filed the enclosed certified copy of certain resolutions of Carondelet, approved 29th January, 1852. The papers of our files, referred to in the foregoing, and described in the accompanying schedule, (Z,) are herewith transmitted.

With great respect, your obedient servant,

J. BUTTERFIELD,
Commissioner.

Hon. A. FELCH,
Chairman of the Committee on Public Lands, Senate U. S.

IN THE SENATE OF THE UNITED STATES.

MARCH 15, 1852.

Ordered to be printed.

Mr. FELCH made the following

REPORT:

The Committee on Public Lands, to whom was referred the petition of William Woodbridge, asking a grant of land, respectfully report :

That the claim of the petitioner is founded on the simple fact that his father, Major Theodore Woodbridge, was an officer in the American revolutionary army. No proof of any kind accompanies the petition, and no circumstance is stated, tending to show any reason why a favor should be extended to the petitioner more than to any other son of a revolutionary soldier. The whole class of persons holding that relation should, in the opinion of the committee, be provided for, if the principle here involved is to be recognised, and not one individual, who exhibits no special cause in his favor, to the exclusion of others. No well-founded reason, however, occurs to the committee for bestowing such gifts, either on the class or individuals, and they recommend the adoption of the following resolution :

Resolved, That the prayer of the petitioner be not granted.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1852.

Ordered to be printed.

Mr. RUSK made the following

R E P O R T :

[To accompany bill S. No. 289.]

The Committee on the Post Office and Post Roads, to whom was referred the "petition of John J. Sykes, praying compensation for services performed under an appointment from a special agent of the Post Office Department," have had the same under consideration, and respectfully report:

That under the statement of facts contained in the letter of the Postmaster General, addressed to the Hon. Edson B. Olds, chairman of the Committee on the Post Office and Post Roads, dated January 22, 1852, (marked A) the petitioner has, in the opinion of the committee, an equitable claim to compensation. Whatever defect may have originally existed in the manner of his appointment, that defect was cured, so far as he was concerned, by the subsequent settlement made by the special agent, by whom he was appointed, with the department, in which the items connected with his service were allowed. It was impossible for the petitioner to be aware of what had transpired at Washington subsequent to the settlement, until he was informed of it in the regular course of mail; and although at the time of his being appointed by the special agent to take charge of the books and papers in the office, that agent had ceased to be such, and consequently had no right to make the appointment, the petitioner cannot be held responsible on that score; and if he continued to discharge his duties faithfully, he is certainly as much entitled to compensation for his services as if no change had taken place, on production to the department of sufficient evidence of the fact. The certificate of the postmaster at San Francisco would, as it seems, be the most satisfactory testimony on this head, and, with the proper receipts from those to whom he had paid money for the incidental expenses of the office, would constitute such evidence as would justify the allowance of the claim.

Your committee therefore recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1852.

Ordered to be printed.

Mr. RUSK made the following

REPORT:

[To accompany bill S. No. 290.]

The Committee on the Post Office and Post Roads, to whom was referred the petition of Wade Allen, of the firm of Allen and Kitchen, praying a further allowance under their contract for carrying the mail, have had the same under consideration, and respectfully report :

That the said Wade Allen and one William Kitchen entered into a contract with the Post Office Department on the 14th of June, 1842, to carry the mail in four-horse post coaches, between Montgomery and Mobile, Alabama, daily for four years, from 1st of July, 1842, to the 30th of June, 1846, for the annual compensation of thirty-six thousand six hundred and seventy dollars. Under the contract so made, a schedule was prescribed, allowing thirty-seven and a half hours in summer, on the trip from Montgomery to Mobile, and forty-eight hours in winter; and thirty-six hours in summer, and forty-five in winter, on the trip returning from Mobile to Montgomery. By an endorsement on the contract, it appears to have been agreed that the summer schedule should be in force for eight months in the year, and the winter schedule for the remaining four—namely, the months of December, January, February and March. In the years 1844 and 1845 a private express was established on the route, for the purpose of anticipating the mail, and operating upon the markets of Mobile and New Orleans, in advance of the regular information of variations in the prices of staple products in the northern and foreign markets. To counteract this object, so injurious to the Post Office Department and the commercial interests generally, the department on two occasions ordered the summer schedule to be enforced during the month of March. On the 29th of February, 1844, W. H. Dundas, esq., of the Post Office Department, addressed a letter to the petitioner, he having become sole proprietor, directing him to commence running by the summer schedule on the first of March, 1844. In a letter from the petitioner to L. G. Alexander, special agent of the department, who had written to him to ascertain whether he would commence running the ensuing month by the summer schedule, at the increased *pro rata* pay for the increased speed, the petitioner gave an affirmative answer; in consequence of which the said special agent ordered him to commence, which he did, as will appear by Alexander's letter dated February 27, 1845.

The increase of speed for the months of March, 1844 and 1845, was not

required under the contract, and the service was performed with the promise or expectation of additional compensation ; although the department is not permitted to make additional allowance for increased speed, unless additional stock is employed, because it required the use of better horses, which cost more money of course, and a greater number of them to be kept on hand to meet contingencies and accidents belonging to fast travelling, although the number of teams was not increased.

On the 10th of June, 1846, a bill was reported to the Senate for the relief of the petitioner, No. 202. On the 22d January, 1847, another bill was reported, No. 116. On the 3d June, 1848, a third bill, No. 275 ; and on the 2d May, 1850, a fourth, No. 216 ; of which No. 116 passed the Senate, but failed to pass the House of Representatives, merely for want of time to act upon it. The other bills failed in the Senate, as would appear, for want of time to act upon them.

Your committee, believing that the petitioner is justly entitled to increased compensation for a service which involved a greater outlay, on his part, than that called for by his original contract, more especially when the increased outlay was required by the Post Office Department, with a view to the welfare of the trading interests of the country at large, and to prevent speculators from enjoying advantages to the exclusion of the community in general, recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1852.
Ordered to be printed.

Mr. GWIN made the following

R E P O R T :

[To accompany bill S. No. 292.]

The Committee on Naval Affairs, to whom was referred the memorial of Richard W. Meade, late a lieutenant in the navy, praying to be allowed expenses incurred in consequence of the refusal of Commodore Jones, commander of the United States squadron in the Pacific, to allow him to take command of a vessel in obedience to an order of the Secretary of the Navy, have had the same under consideration, and report :

That in April, 1849, the memorialist proceeded to San Francisco, California, by the overland route, under orders from the Navy Department, to take command of the steamer Edith, then attached to the United States squadron upon the Pacific station, accompanied by his clerk, who went out with him by authority of the department ; that he arrived at San Francisco on the 15th of July, and reported to Commander Long, the senior officer of the squadron present, who declined to place him in command of the steamer in consequence of the absence of the commander-in-chief ; that upon the return of Commodore Jones, the memorialist repeatedly applied to him to be put upon the duty for which he was sent out by the department, but his application was refused ; that the memorialist was consequently detained on shore at a heavy expense from the 15th July to the 30th September, 1849, when he returned to the United States ; that he presented his accounts and vouchers for the expenses necessarily incurred for the subsistence of himself and clerk during the period above stated, to the Fourth Auditor, for settlement, who considered the allowance of the claim prohibited by the act of 3d March, 1835, regulating the pay of the navy. In reference to this case, the Auditor remarks as follows :

“ As Lieutenant Meade, with his clerk, proceeded to California under the reasonable expectation, founded upon an express order of the Secretary of the Navy, that, upon his arrival there, he would be placed in command of the United States steamer Edith, which expectation was disappointed by the omission of the commander of the United States squadron there to comply with the said order ; and as, in consequence of such omission, he was compelled, without any fault of his own, to remain on shore, subject to very extraordinary expenses, such as the pay allowed him by law was certainly never intended to cover, it seems to me equitable that Congress should grant him the relief he asks. His claim was necessarily rejected by

the accounting officers, as they are prohibited from making any allowance to a naval officer beyond his pay and travelling expenses. If the cost of Mr. Meade's board, and that of his clerk, should be defrayed by the government, I think that the value of their rations for the time should be deducted from the amount."

The committee concur in the opinion expressed by the Auditor, and report a bill for the relief of the petitioner.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1852.
Ordered to be printed.

Mr. PRATT made the following

REPORT:

[To accompany bill S. No. 293.]

The Committee of Claims, to whom was referred the petition of the representatives of W. G. Williams, have considered the same, and now report:

That it appears, from the papers filed in this case, that Captain W. G. Williams, of the topographical engineers, was killed at Monterey; that he acted in some way also as a disbursing officer; and that some of his vouchers were lost, and that his account with the government showed a balance against him of about three hundred dollars.

It also appears that the extra pay allowed by the act of July, 1848, to the widows and orphans of officers and soldiers killed in battle, was credited by the War Department to this balance.

The prayer of the petitioner is, that his account shall be settled by assuming that the vouchers lost would balance his account; and that the extra pay allowed by the act of July, 1848, should be paid to his representatives.

The letter of Colonel J. J. Abert, chief of the Topographical Bureau, expresses the opinion that Captain Williams had faithfully applied all the money in his hands, and recommends that the prayer of the petitioners should be granted.

The War Department, as appears by an endorsement on the back of the letter of the attorney of the petitioners, also recommends the allowance of the claim. Your committee are of opinion that the petitioners are entitled to relief, and they report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1852.

Ordered to be printed.

Mr. STOCKTON made the following

REPORT :

[To accompany joint resolution S. No. 26.]

The Committee on Naval Affairs, to whom was referred so much of the President's message and accompanying documents as relates to naval affairs, having had under consideration that part of the report of the Secretary of the Navy which refers to the construction of a war-steamer by Robert L. Stevens, report :

That on January 13, 1842, the Board of Commissioners of the Navy recommended Mr. Stevens's plan for a steamer, to be ball and bomb proof, to the consideration of the Secretary of the Navy. Shortly afterwards Mr. Stevens submitted to Congress a printed copy of his plan. The chamber of commerce of New York, on the 15th of February, 1842, recommended to Congress the plan of Mr. Stevens.

A joint board of officers of the army and navy, to wit : Colonels Totten, Thayer, Talcott, and Captain Huger, Commodores Stewart and Perry, Captain Stringham, and Lieutenant Newman, appointed for that purpose, convened in New York the 8th of July, 1841, to witness, superintend, and report upon Mr. Stevens's experiments with a bomb and ball proof target, suited to the sides of a vessel. The experiments were made in their presence, and a report of the board submitted to the department in favor of Mr. Stevens's proposed plan of construction.

On the 14th of April, 1842, Congress passed an act authorizing the Secretary of the Navy to contract with Mr. Stevens for a war-steamer, shot and ball proof, to be constructed principally of iron, upon the plan of Mr. Stevens, not to cost more than the average of the steamers Missouri and Mississippi, and appropriated \$250,000 for the purpose.

On the 10th of February, 1843, Mr. Stevens entered into contract with Mr. Upshur, Secretary of the Navy, to build a war-steamer, "to be shot and ball proof against the artillery now in use on board vessels-of-war."

In order to launch a vessel of the size and description of the one contracted for, Mr. Stevens found it necessary to excavate, and erect at his own and an enormous expense, a dry dock of capacity sufficient to build her in and float her out. This, of course, involved the necessity of delay in her construction; though while engaged in making the dry dock, he was also assiduously engaged in procuring the materials, fashioning the patterns, and organizing the preliminary details for an undertaking of such magnitude and importance.

In December, 1843, Mr. Henshaw, who succeeded Mr. Upshur as Secretary of the Navy, declined making the necessary payments for materials. In November following, a second contract, very full, minute, and particular, was made with Mr. Stevens, which was followed by a supplemental contract with John Y. Mason, Secretary, in December, 1844, and which provided for the payments on account of the contract. Mr. Stevens then prosecuted with vigor the performance of his duties; and while so engaged, on the 9th of December, 1845, was again arrested in the execution of his contract, by an order from Mr. Bancroft, stopping all further proceedings under the contract, and refusing further payments until the plan for the steamer was furnished. Yet, at this very time, the department was in possession of the plan of Mr. Stevens, furnished when the original contract was first made, and a further statement of his plan furnished in November, 1844. Thus a second time was he stopped in his work. His health being seriously impaired, he was ordered to Europe by his physician.

In January, 1847, Mr. Stevens applied to Mr. Mason, then Secretary, for an extension of time in which to complete the steamer, and satisfactorily accounted for the causes of whatever delay had been suffered. After more than eighteen months, an additional contract was made, reciting the former, and extending the time of completion to four years from the date of the last. By these several contracts, the most minute details of the work were given, and the complete security for the execution of the project, and every proper safeguard, was provided against loss by the United States.

Half a year, however, was permitted to elapse, when, in August, 1849, Mr. Secretary Preston refused to make any further payments to Mr. Stevens on account, and the work was again stopped. Mr. Stevens was then in Europe, engaged in obtaining better materials for some portions of the steamer than could be obtained in this country. Contracts were made by him in Europe for such materials. After which he immediately returned home, and urged the Secretary to permit him to proceed according to contract. Mr. Preston, however, declined taking any other step than to refer the matter to Congress.

Whatever delay took place in the performance of this contract, was indispensable to its faithful and successful execution. The necessity for these delays was not, it is believed, properly appreciated by the Navy Department. The experiments necessary to test the quality of the materials, and demonstrate the details of the plan, involved the consumption of much time. The experiments necessary to establish and improve the character of the propeller which was finally adopted, also required much time. Even from this delay the government derived the advantage of availing itself of this propeller, in the construction of the Princeton, which was thus proved to be superior to any other then in use, or indeed since adopted. Workshops, together with a steamboat, were required to be built for those experiments. Also a large dry-dock was constructed, with a steam-engine, punching and drilling machines, tools, &c., and large pumps, which have kept the dock free from water ever since its completion, at very great expense. One-third of the dry-dock within which the government iron steamer was to have been built, was excavated from solid rock. All this consumed and required unremitting personal exertion and supervision, and large expenditures of money, for which no remuneration has been made. ^{But} But all delay was satisfactorily explained before the several renewals of the contract, at each period of such renewal.

When the contractor was first arrested, by Mr. Secretary Bancroft, he was in advance, and liable for materials; principally for heavy plates of iron from Pennsylvania, about \$40,000, which was subsequently paid to him. He is now in advance about \$30,000, also for heavy plates and tubes for the boiler, &c., from England. Yet the government now proposes to sell his property to reimburse itself for previous payments on his contract, for non-performance of the same, performance of which has been prevented by the action of the government itself.

On the 21st January, 1851, Commodore Skinner addressed Mr. Stevens, and informed him that the Navy Department, considering the contract void, designed to sell, shortly, the materials collected by him for the purpose of executing it according to his several agreements.

To sum up the whole subject, it appears that Congress, by the act of 14th of April, 1842, directed a Secretary of the Navy to make a contract with Robert L. Stevens for a war-steamer, and appropriated a specific amount of money towards the construction proposed. The contract was executed. Mr. Stevens, in good faith, proceeded to perform all his obligations. The contract was afterwards made more specific, its minutest details enumerated, and the time for its completion extended by a succeeding Secretary. The amplest security for its faithful execution was required and given. Officers of the United States were appointed to superintend the receipt of materials provided, and payments for such materials were made by the government from time to time. A subsequent Secretary of the Navy, without any previous notice to the contractor, suddenly suspended the execution of the contract, and refused the payments stipulated therein to be made; leaving the contractor bound to pay large sums for the materials for which he had contracted in the prosecution of his work. Another Secretary renewed the contract, and extended the time for its execution. The contractor again vigorously and actively applied himself to the execution of his contract. While thus industriously employed, another Secretary again arrested his work, and finally suspended all payments, and referred the subject to Congress. The present Secretary considers himself bound by the acts of his predecessor, and treats the contract as at an end; and Congress having omitted to act on the subject, has given notice to Mr. Stevens, under the power to sell, contained in the mortgages executed by the contractor, that the materials collected by him will be sold for the benefit of the government.

It is therefore apparent that, without some legislative action by Congress, the contractor, who is willing and desirous of fulfilling his engagements in good faith, entered into by the *direction and under the authority* of Congress, will, by executive interposition, be subjected (against right, as your committee believe) to very heavy and unjust losses, while the government will lose the advantages to be derived from the genius, skill and science of one of the most accomplished naval architects in the country, in the construction of that very sort of war-steamer which the service requires.

Your committee, therefore, on full consideration of the whole subject, recommend the adoption of the following joint resolution:

Resolved by the Senate and House of Representatives in Congress assembled. That the Secretary of the Navy be, and he is hereby authorized and required to have completed, without any unnecessary delay, the war-steamer contracted for with Robert L. Stevens, in pursuance of an act of Congress passed April 14, 1842.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1852.

Ordered to be printed.

Mr. Rusk made the following

R E P O R T :

J. B. Amos, the petitioner, asks indemnity for a loss sustained by him, as he alleges, on account of the establishment of a new mail route, by which the travel was directed into a new channel.

The facts are these:—The petitioner became the contractor for carrying the United States mail upon route No. 5203, from Glasgow to Bowling Green, Kentucky, for the four years next ensuing the first of July, 1850. At the time he made his bid, and up to the commencement of his contract, the Post Office Department had advertised, and subsequently did establish, a mail route from the city of Louisville to Glasgow, and also a route from Bowling Green to Hopkinsville, thence to Smithland and Columbus, both of which routes connected with the route for which petitioner had contracted, (No. 5203) at Bowling Green. Subsequently, the Postmaster General entered into a contract with certain parties, to transport the mail daily from Louisville, Kentucky, via Elizabethtown, to Bowling Green, and changed the hours of starting, whereby the petitioner's line was disconnected from other lines, and the travel diverted from his line, thus causing him, as he alleges, serious loss.

Taking the petitioner's own statement of facts, it would seem that his profits from sources to which he looked, in making his contract for carrying the United States mail, had been seriously diminished by the establishment of a new route along which travellers were induced to pass. With individual speculations the Post Office Department has nothing to do. When mail service is required, contracts are made, and it is presumed that each bidder knows for what amount he can afford to carry the mail, taking into account any incidental advantages that may inure to his benefit. If the public convenience, in the opinion of the department, demands additional mail service on new routes, it is the business of the Postmaster General to provide such additional facilities; nor can he with any propriety look to any matter *dehors* the contracts previously made, and deprive the public of its just rights, because individuals may be benefited or injured. In the case under consideration, the petitioner continued to receive all he had contracted for; and whatever loss on his part may have arisen from incidental circumstances, the government cannot be held answerable for it, in law or in equity. The government ran no opposition to his line of coaches, although it may have happened that in contracting for the transportation of the mail upon an additional route, it incidentally furnished an opportunity for the establishment of a line of coaches which interfered with the profits of the petitioner's line, and it cannot be held answerable for the consequences thus produced. Under

these circumstances, your committee are of the opinion that the claim should not be allowed, and recommend the adoption of the accompanying resolution:

Resolved, That the claim of J. B. Amos, for remuneration for losses incurred in consequence of an alleged change in his contract for carrying the mail, should not be allowed.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1852.
Ordered to be printed.

Mr. GWIN made the following

R E P O R T :

The Committee on Naval Affairs, to whom was referred the petition of James D. Johnston, praying to be allowed the difference between the pay of a master and that of a lieutenant during the time he performed the duties of lieutenant on board the store-ship Relief, have had the same under consideration, and report :

That with a view to a correct understanding of the circumstances, the papers were submitted to the Fourth Auditor of the Treasury, for examination and report. The reply of that officer, herewith annexed, contains a review of the facts in the case, and gives strong reasons against the allowance of the claim. The committee concur in the opinion expressed by the Auditor, and report adversely to the prayer of the memorialist.

TREASURY DEPARTMENT,
Fourth Auditor's Office, March 13, 1852.

SIR : I have the honor to acknowledge the receipt of your letter of the 11th instant, requesting me to furnish, for the use of the Committee on Naval Affairs of the Senate, such information as I may possess, upon the subject of a petition presented to Congress by Lieut. James D. Johnston, in which he asks to be allowed the difference between the pay of a master and that of a lieutenant, during the time he performed the duties of the latter grade on board the store-ship Relief, which he alleges to have been from the 7th of September, 1842, to the 16th of April, 1843.

I think that Mr. Johnston's application is founded on a misconception. He never did in fact perform the duties of a lieutenant on board of the Relief. She was not a vessel of war. She was a store-ship merely, purchased for the exploring expedition, and, upon the return of that expedition, was sent out as a store-ship to the Pacific squadron. No duties performed on board of her were those of a lieutenant, except by the special appointment of the Secretary of the Navy. It by no means follows that because duties of a certain description in a ship-of-the-line, or a frigate, or even in a sloop or schooner-of-war, are those of a lieutenant, they are so in a vessel like the Relief. The Secretary, if he had chosen, might have sent her to sea with no officer superior to a passed midshipman, in which case none of the duties performed in her would have been those of any higher grade. He did

order her to sea with but two lieutenants, one of whom was to command her; and that one attempted, without the slightest authority, to constitute a third. She had a small crew, and a very small armament, and the Secretary, when he fixed her complement, as he certainly had a right to do, determined in effect that the duties, of whatever description, which could not be performed by the two lieutenants attached to her, should be discharged by the inferior officers in their own proper grades. The Relief was not included in the table of complements for vessels of war; and it was then, as it still is, a rule of the department, that the complements of vessels not embraced in that table should be specially assigned by the Secretary upon their being ordered into service, and should remain the same until altered by himself. It would be an outrage upon discipline to admit, that when the head of the department has decided that two officers of any particular grade are sufficient for a vessel, the officer in command may, in the face of his decision, increase the number to three or four. The Secretary of the Navy assigned to the Relief the number of officers of each grade which she was to bear, and the commanding officer had not the power to change it. If a *vacancy* had occurred, from death or other cause, he might have filled it temporarily, and that was the extent of his authority. The duties, therefore, which he directed Mr. Johnston to perform, were not those of a lieutenant, but such as the Secretary of the Navy had determined should be performed on board of that particular vessel by an inferior officer.

The name which the lieutenant commanding chose to give them in his order made no difference in their character, and could not defeat the Secretary's intention. I repeat, therefore, that in my opinion Mr. Johnston never performed the duties of a lieutenant on board of the Relief; and if the view I have taken of the subject be correct, he is not entitled to the difference of pay he asks.

It appears to me, that upon a petition of this kind to Congress, for relief, an officer should have some other ground than the mere supposed hardship arising from the ordinary enforcement of a law or regulation enacted by competent authority. He should establish some equity, by showing either misapplication of a statute or rule, or some special injury sustained by its application which could not have been contemplated in its enactment. I presume that Congress would not interfere, in the manner now proposed, to annul a law or regulation, nor could they justly do it in respect to one case, to the exclusion of others precisely like it. The act of which the petitioner complains is simply the application, under ordinary circumstances, of a general rule of the Navy Department, to one out of many cases, all of which have an equal claim to the regard of Congress. A similar instance occurred on board of the same vessel to which the petitioner was attached: Mr. Worden, a passed midshipman, who served in the Relief, and who, alleging, like Mr. Johnston, that he had performed the duties of a lieutenant, produced similar evidence of the fact, was refused the difference of pay by the Secretary of the Navy, to whom his application was referred. I do not believe that Mr. Johnston can produce one case, in all respects analogous to his, in which the allowance he solicits has ever been made.

The petitioner refers to the store-ship Lexington, as having had a greater number of lieutenants than the Relief. That is true. She had been a sloop-of-war. She was a larger vessel than the Relief, and had a more numerous crew; and the Secretary of the Navy, in the exercise of a legitimate

discretion, saw fit to allow her a different complement of officers. It would have been more to the purpose, if the petitioner had shown that her commanding officer added to the complement of lieutenants assigned her, by promoting a passed midshipman, and that the person so promoted had been allowed a lieutenant's pay. Neither the *Lexington* nor the *Relief* has recently had, when in commission, a single lieutenant besides the one commanding.

The papers which you referred to me are herewith returned.

I have the honor to be, sir, very respectfully, your obedient servant,

A. O. DAYTON.

Hon. W. M. GWIN,

Chairman of the Committee on Naval Affairs, U. S. Senate.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1852.
Ordered to be printed.

Mr. FISH made the following

REPORT:

[To accompany bill S. No. 206.]

The Committee on Naval Affairs, to whom was referred the petition of Purser F. B. Stockton, praying the return to him of sixty-seven dollars and fifty-seven cents, paid by him into the treasury, for public money lost in consequence of the failure of a bank in which it was deposited, have had the same under consideration, and report :

That at the time of the failure of the Phoenix Bank of Charlestown, Massachusetts, in 1842, a balance of deposits made by the memorialist, as purser of the frigate (raze) Independence, was standing to his credit on the books of the bank. The final balance, after deducting dividends received by him upon the winding up of the affairs of the bank, amounted to the sum of \$67 57, which he has paid into the treasury of the United States, as appears by the certificate of the Fourth Auditor, dated December 27, 1849. The memorialist claimed credit for the sum above stated in the settlement of his accounts, but the accounting officers had no authority to allow it, without the direction of Congress.

The committee being of opinion that this case is similar in facts and circumstances to that of Purser Taylor, recently reported upon favorably, recommend like relief, and report a bill accordingly.

IN SENATE OF THE UNITED STATES.

MARCH 17, 1852.

Ordered to be printed.

Mr. BRADBURY made the following

R E P O R T :

[To accompany bill S. No. 296.]

The Committee on the Judiciary, to whom were referred the memorial and papers in the case of Walter Colton, late a chaplain in the navy of the United States, having considered the same, recommend the passage of the accompanying bill, and adopt the annexed report, made by the Judiciary Committee of the Senate, at the first session of the thirty-first Congress,, as containing a concise narrative of the facts relative to the subject under consideration.

IN SENATE—February 21, 1850.

The Committee on the Judiciary, to whom was referred the memorial of Walter Colton, a chaplain in the navy, praying for compensation for services rendered and expenses incurred under certain appointments in California, have had the same under consideration, and report :

Upon the capture and occupation of Monterey by the American forces, in July, 1847, Commodore Stockton, the commander-in-chief, detached the memorialist from the frigate Congress, and stationed him on shore, as chief civil magistrate for the middle department of California. He was directed to provide suitable buildings, and to employ such assistants as the duties of his new situation, involving those of the office of alcalde, should render necessary. In this situation he continued for more than two years in the performance of duties at once onerous and arduous, and of a highly responsible and delicate character, extending to the cognizance of all cases, civil and criminal, within the department, and to the exercise of executive powers commensurate with his judicial functions.

The situation of Mr. Colton was found so onerous and expensive that he applied to be relieved at the expiration of a year, but his application was denied, and he was required to remain at his post for more than a year longer.

Several captures having been made by vessels of the Pacific squadron, the commanders of the naval and military forces, by their concurrent action, organized a prize court, and the duties of admiralty judge were im-

posed upon Mr. Colton. The necessity for such a court grew out of the impracticability of bringing the prizes around Cape Horn for adjudication in any of the courts within the States.

The duties of a judge in examining this class of cases, and investigating the principles applicable to them, under circumstances where the sources of information were limited, were necessarily of a most embarrassing character; while at the same time the condition of the country and the imperfect organization of the court rendered Mr. Colton's services important, if not essential, in the management and disposal of the property condemned. In regard to one case, his services were of such character as to require particular notice in considering the application he has made to the government for remuneration.

In March, 1848, the ship *Admittance* and cargo having been condemned as lawful prize and put up for sale at public auction at Monterey, in pursuance of the decree of the court, the following bids were made therefor, viz:

1st. A bid of \$32,000, cash on delivery of the property.

2d. A bid of \$44,000, in bills on Paris, without security.

3d. A bid of \$60,000 upon conditions totally inadmissible: first, that the ship and cargo should lie at Monterey several months at the risk and expense of the United States; and second, that they should be entered at San Blas, which was not a port of entry.

4th. A bid of \$61,000, by S. H. Green, of Monterey, as the agent of Mr. Colton, who procured the bid to be made to prevent a sacrifice of the property. The ship and cargo were struck off to him at that price; and assuming thereby the liability to pay the amount of the bid, a bill of sale of the property was made and delivered at the time of the transaction. By careful management and a fortunate disposition of the property, Mr. Colton was enabled to realize, and caused to be paid into the treasury of the United States, the sum of \$67,497 ⁹⁰/₁₀₀, after satisfying liens existing at the time of the sale to the amount of \$1,367 ⁴³/₁₀₀; thus depositing in the public treasury \$7,865 ³³/₁₀₀ over and above the net amount to be realized from a sale at \$61,000, the price at which the property was struck off, and \$36,865 ³³/₁₀₀ more than if it had been allowed to be sold at the cash bid of \$32,000. The whole net amount received from a resale of the ship and her cargo was deposited to the credit of the United States, without deduction by Mr. Colton, under the impression that the Treasury Department would be authorized to make a settlement with him on his arrival in Washington, in which he should receive just compensation for his services and expenses, he desiring nothing more. This course was also suggested by a scrupulous regard to his position in reference to these prizes, and a laudable solicitude that nothing should attach to any transaction that might be susceptible of misconstruction, or be viewed in any light as derogatory to the position he held.

As chief civil magistrate and alcalde, Mr. Colton's duties commenced in July, 1846, and terminated in September, 1848; as judge of the admiralty court, they did not close until April, 1849; embracing in the whole a period of two years and eight months, during which he resided at Monterey, in a situation necessarily involving heavy expenses and requiring arduous services, for neither of which has he received any compensation beyond his limited pay as chaplain in the navy, which would not cover a moiety of the expense to which he was necessarily subjected.

Of the faithful and satisfactory manner in which Mr. Colton performed

the responsible and various duties imposed upon him by his appointments in California, the most ample testimonials are found in the papers accompanying the memorial. Without going further into a narration of the details of the case, the committee, being of the opinion that it is the plain dictate of justice that Mr. Colton should receive compensation for his expenses and services under the extraordinary circumstances in which he has been placed, recommend, unanimously, the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1852.
Ordered to be printed.

Mr. UPHAM made the following

REPORT :

The Committee on the Post Office and Post Roads, to whom was referred the memorial of H. N. Denison, praying payment of an accepted draft on the Post Office Department, report :

That the memorialist sets forth, in substance, that he is the owner of a draft drawn by James Reeside, upon the Post Office Department, on the 7th of November, 1834, for the sum of \$2,060, and accepted by O. B. Brown, treasurer of said department ; that said draft was not paid according to its acceptance, but was taken up by the drawer and paid away ; that it now has become the property of the memorialist, for a valuable consideration ; and that the department has retained the money covered by said draft, and is bound to pay it.

The draft, with the acceptance and names endorsed upon it, is appended to the memorial, and is in the words and figures following, to wit :

“ WASHINGTON CITY, November 7, 1834.

“ O. B. BROWN, esq., *Treasurer of the Post Office Department :*

“ SIR : On the seventh day of May next, please pay to Orlando Saltmarsh, or order, two thousand and sixty dollars, for value received, and charge the same to my account with the Post Office Department.

“ Your obedient servant,

“ JAS. REESIDE.”

“ Accepted, to pay if the drawer shall perform his contract.

“ O. B. BROWN, *Treasurer.*”

The following names are endorsed on the back of said draft, to wit :

ORLANDO SALTMARSH.

JAS. REESIDE.

DENISON & McMULLAN :

H. N. DENISON.

The memorialist rested his claim upon his memorial and appended draft, and furnished no other evidence whatever to sustain it.

In this state of the case the committee, regarding the evidence before them wholly insufficient to warrant a favorable report, addressed a letter

to the Postmaster General, asking for all the information this department could furnish in regard to the matter. The Postmaster General referred the letter to the Auditor in the department for a report.

After a full examination of the subject, the Auditor made his report, in the words and figures following, to wit :

AUDITOR'S OFFICE, POST OFFICE DEPARTMENT,

March 12, 1852.

SIR : As you have requested me to furnish, for transmission to the Hon. Mr. Upham, in compliance with his request of the 9th instant, all the information I can, "in regard to the justice of the claim" for whose payment H. N. Denison has petitioned Congress, I have the honor to inform you that there is, at this day, no one in my office who has personal knowledge as to the merits of the claim, or of the transactions out of which it arose ; and that, in considering it, I must, of necessity, be guided exclusively by the light furnished by the past action of this department, and of Congress, in relation to similar claims, heretofore presented for consideration and allowance. It appears that, under Mr. Barry's administration of the department, a practice of accepting drafts drawn by contractors with reference to their pay, but in advance of it, and often greatly exceeding it, extensively prevailed. These acceptances were unauthorized by law, or any general regulation, and rested merely upon usage, of apparently recent origin ; and the extent to which they were given, aptly appears from a letter addressed by Mr. Kendall, as Postmaster General, to the Hon. D. Russell, of the Committee of Claims of the House of Representatives, charged with the consideration of the petition of C. Vanderbilt. The letter is dated February 23, 1837, and I extract from it, as follows : " You ask, ' under what law or regulation of the government the acceptances in the petition (C. Vanderbilt's petition) referred to were given ? ' There is no law or regulation in relation to such acceptances. The giving them was a usage merely. Such paper, to the *amount of nearly half a million dollars*, was outstanding on the 1st of May, 1835 ; most of it in anticipation of pay thereafter to accrue. Not being able to satisfy myself that there was the least validity in the acceptance of the department, inasmuch as the Postmaster General could not bind himself, officially, to make payment where nothing might be due ; and, moreover, considering the practice highly mischievous and inexpedient, I determined to discontinue it as soon as possible."

Prominent among these, to whom the department's acceptances were thus given, or lent, was Mr. James Reeside, an extensive mail contractor of that day, and the drawer of the draft for the payment of which Mr. Denison has now petitioned Congress. On the acceptance of a draft, it appears to have been the practice to note the acceptance in a bill-book kept for that purpose by the chief clerk, who also acted as treasurer of the department. This book is still in existence ; and, on examining it, I find the acceptance of the draft—the payment of which is now claimed by Mr. Denison—noted therein as follows : " Date of draft, Nov. 7, 1834 ; drawer, Jas. Reeside ; in whose favor, Orlando Saltmarsh ; amount, \$2,060 ; payable 2d qr. 1835, May 7."

It seems to have been claimed on behalf of Mr. Reeside, that, in drawing, and afterwards negotiating drafts, he gave the department the benefit of his credit, and materially aided it in its effort to bear up and struggle on

under the pecuniary difficulties that oppressed it during Mr. Barry's administration of its affairs; but, on the other hand, it seems to have been the opinion of some of those who have heretofore investigated the subject, that, instead of sustaining the credit of the department, Mr. Reeside used the department for his own advantage, and to sustain his own credit. Mr. Whittlesey, former Auditor, in his letter of the 20th April, 1842, addressed to the Hon. Joseph Trumbull, of the Committee on the Judiciary in the House of Representatives, charged with the consideration of the petition of Henry H. Williams, remarked—"It is alleged by them, (the holders of Reeside's drafts,) that in this way (by making drafts) Mr. Reeside rendered important services in raising money for the use of the department during the period of its embarrassment. *My own opinion is, that the scheme was more adapted to the accommodation of the contractor.*" And, afterwards, facts are stated in his letter, which seem strongly to justify Mr. Whittlesey's opinion. For example: it is said that the balance against Mr. Reeside, on the 18th of April, 1835, as shown by the books of the department, was \$36,825 51; that, besides being his creditor, directly, to this amount, the department was under a qualified responsibility, as conditional acceptor of his paper, (of which the draft now held by Mr. Denison was a part,) to the amount of \$30,424 50; so that, on the said 18th of April, 1835, it was either absolutely or contingently his creditor to the amount of \$117,250 01; and that "his large contracts expired on the 31st of December, 1835, less than nine months after said acceptances were made; but that, had they continued in operation, it would have required the pay of nearly two years to reimburse the advances and the liabilities of the department existing on that day." In view of these facts, there can be no doubt that the conditional acceptance of the draft now held by Mr. Denison was an accommodation acceptance, for the benefit of the drawer; and were Reeside now claiming under it, his claim would, doubtless, be instantly rejected as untenable. Is Mr. Denison in a better condition? In his memorial he refers to the draft and states his ownership of it thus: "Your memorialist is the owner of a draft drawn by James Reeside upon the Post Office Department on the 7th November, 1834, and accepted by O. B. Brown, treasurer of said department. That the said draft was not paid according to its acceptance; but *was taken up by the drawer and paid away*, and it now has become the property of the memorialist, for a valuable consideration." Evidently, from the description thus given of the draft, it was not negotiated, or put into circulation, *until after it had become due, and the department had refused to pay it.* The allegation is, that "it was not paid according to its acceptance, but *was taken up by the drawer and paid away*;" hence I infer that, under the practice of that day—and such would be the case under the practice now prevailing—the draft, *after its conditional acceptance, was placed on file, in the department, and remained there until its maturity; when, finding it had no funds of the drawer to meet his draft, the department, refusing to pay it, required the drawer himself to pay and take it up*; and thus absolved itself from all obligation arising under its qualified acceptance. If, *afterwards*, the draft was put in circulation, the endorsee took it, of course, with all the equities, and subject to all defences existing between the drawer and acceptor. *After it had been "taken up by the drawer and paid away," the draft became, as it is alleged in the memorial, "the property of the memorialist, for a valua-*

ble consideration." At *what time* the memorialist acquired property in the draft, is not precisely stated; but I think it fair to infer that it was not only "after," but *long after*, its maturity, and under circumstances that ought to have put him on inquiry in regard to the paper before purchasing it. But, as if in some degree mistrusting the strict legality of his claim, he appeals to, and relies upon, payments in other cases, as precedents favoring payment to himself; yet, if he had examined the cases on which he relies, he would have found, I think, that they furnish him little support. In the case of Abraham Horbach, which is one of those referred to by Mr. Denison, Congress paid the draft, or rather directed its payment, because it "was endorsed by Abraham Horbach, at the instance of the said James Reeside, and the amount drawn from the bank at Philadelphia; and, *at maturity*, said draft was *protested for non-payment*, and said Horbach became liable to pay, in consequence of his endorsement, *and did pay the full amount* of said draft."—(See the act for the relief of Abraham Horbach, approved August 10, 1816.) It will be seen that, in the case of Horbach, the draft was negotiated before it was due, and in the regular course of business.

In the case of the Bank of the Metropolis, another of the cases to which Mr. Denison has referred, the draft which the bank was allowed to set off in a suit brought by the United States, had been *unconditionally* accepted; had come, before maturity, into the possession of the bank in a fair business-like manner, without any circumstances to excite suspicion or inquiry; and after other paper, drawn and accepted in like manner, had been received by the bank, and allowed and paid by the department. (See, for a report of the case, 15 Peters, page 377.) In the remaining case, that of Howland and Aspinwall, referred to by Mr. Denison, Congress, by the fourth section of "An act making appropriations for the service of the Post Office Department," directed the payment of \$5,000 on a draft drawn by Reeside; but it does not appear that the propriety of the payment was at that time particularly investigated; the section authorizing it was grafted upon an act with which it had little natural relation, and was probably permitted to pass *without* scrutiny. (See the act approved March 2, 1847.) The same claim, if I mistake not, had been previously before Congress, on the memorial of H. H. Williams, a prior holder of the draft; and after a careful and searching examination into its merits, *had been rejected by the Committee on the Judiciary*, to which it was referred. (See House reports, 27th Congress, second session, No. 953.)

In all its material and leading facts, Mr. Denison's claim seems to me to be very similar to that of H. H. Williams, to which I have just referred; and equally so to that of Cornelius Vanderbilt, which was examined and *rejected* on the 23d of March, 1838, by the Committee of Claims, in the House of Representatives; (see Reports of Committees, 25th Congress, second session, No. 722;) and the reasoning which justified the rejection of those claims, applies, with equal force, to his, and will equally justify its rejection.

The memorial, draft, and letter of the Hon. Mr. Upham, are herewith returned to you.

Very respectfully, sir, your obedient servant,

J. W. FARRELLY, Auditor.

Hon. N. K. HALL,
Postmaster General.

The facts disclosed in the Auditor's report, show most conclusively that the government is under no legal, just, or moral obligation to pay the claim of the memorialist.

It appears, 1st. That the draft was drawn and accepted in anticipation of pay thereafter to accrue; and that it was a mere matter of accommodation between the parties, and a proceeding unauthorized by law. 2d. That the draft, after its conditional acceptance, was placed on file in the department, and remained there until its maturity; when, finding it had no funds of the drawer to meet the draft, the department refused to pay it, and the drawer, as he was required to do, paid and took it up. 3d. That the draft, long after it had been discredited by the department and paid and taken up by the drawer, was put in circulation, and has now, the memorialist says, become his property, for a valuable consideration.

The payment of the draft at its maturity, by the drawer, under the circumstances mentioned in the Auditor's report, absolved the department from all obligation arising under its qualified acceptance. If, afterwards, the draft was put in circulation by the drawer, the endorsee took it with all the equities, and subject to all defences, existing between the drawer and acceptor. If Reeside were now the holder of the draft, and could not collect it of the government, his endorsee cannot do it, for he stands in no better condition than Reeside himself. The committee, therefore, recommend the adoption of the following resolution:

Resolved, That the prayer of the memorialist be rejected.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1852.
Ordered to be printed.

Mr. FELCH made the following

R E P O R T :

The Committee on Public Lands, to whom was referred the application of John Newton, for leave to relinquish a quarter-section of land in Illinois, and make a new selection, respectfully report :

That it appears, from the papers in the case, that Newton was a soldier in the war of 1812, and received a patent for his bounty land dated January 28, 1818. In 1837 application was made to Congress, representing this land "not fit for cultivation," and desiring liberty to locate another tract in lieu thereof. A general law, authorizing such exchange to be made in all cases, which had been previously in force, had at that time expired by its own limitation. In 1840 this law was renewed, and continued in force for five years, during which time all such exchanges were authorized under it without resort to special legislation.

Before the renewal of this general act, however, Congress acted on the application of the petitioner, and passed a special act giving him the relief then required, and now again demanded. This "Act for the relief of John Newton" was approved February 6, 1839. (See Statutes at Large, vol. 6, p. 748.)

The committee recommend the adoption of the following resolution:

Resolved, That the claim of John Newton be rejected.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1852.

Ordered to be printed.

Mr. FELCH made the following

REPORT:

The Committee on Public Lands, to whom was referred the petition of citizens of Guthrie county, respectfully report:

The petitioners represent that said county is recently organized, and that the county seat has been established on the southeast quarter of section No. 32, in township 80 north, of range 30 west, now the property of the United States; and they pray that Congress would pass a law, giving to the county said quarter-section. By "An act granting to the counties or parishes of each State and Territory of the United States, in which the public lands are situated, the right of pre-emption to quarter-sections of land, for seats of justice within the same," approved May 26, 1824, the county of Guthrie would, under the circumstances stated in the application, be entitled by pre-emption to purchase, at the minimum price, the quarter-section desired. There are no circumstances presented which should take this case out of the general rule applicable to new counties on the frontier, for whose benefit the law above mentioned was enacted, and the committee cannot advise special legislation on the subject. They therefore recommend the adoption of the following resolution:

Resolved, That the prayer of the petition be not granted,

IN THE SENATE OF THE UNITED STATES.

MARCH 18, 1852.

Ordered to be printed.

Mr. FOOT made the following

REPORT:

[To accompany bill S. No. 298.]

The Committee on Revolutionary Claims, to whom the petition of the heirs of Colonel William Grayson was referred, have examined the same, and report:

That the petitioners claim, and ask to be allowed, the commutation pay due to Colonel William Grayson, as a deranged officer, by a reduction of the army on the 1st of January, 1781. They found this claim on the resolution of Congress of the 21st of October, 1780, which allowed to the officers of the army to be left out of service by a reduction of the regiments, half-pay during life, to commence from the time they were thus deranged. That half-pay was commuted for five years' full pay, by an act of Congress of the 23d of March, 1783. (See the Journal of those dates.) Such is the claim; and in support of it the following evidence is exhibited: The certificate of General B. Lincoln, then Secretary of War, and given by him, in the War Office, 23d of May, 1783. He states, on the faith of documents in his office, that William Grayson was appointed colonel of a continental regiment on the 1st day of January, 1777, which rank he held until he was deranged by a reduction of the army on the 1st of January, 1781; that Colonel Grayson was, in December, 1779, appointed a member of the Board of War, in which service he continued until September, 1781, when he resigned that appointment. (See the certificate of General Lincoln, on file, and the Journal, as to the appointment of Colonel Grayson to the Board of War, and his resignation of that appointment.) The Journal also shows, that the same Secretary of War, General B. Lincoln, made a return to Congress on the 31st of October, 1783, of the regiments and corps, and a list of the officers who agreed to accept commutation pay, and on that list is the name of Colonel William Grayson; in confirmation of which there is on file the letter of Colonel William Grayson to General Lincoln in May, 1783, by which he (Grayson) agrees to take commutation pay; and the Secretary of War endorsed on that letter, "Colonel Grayson accepts commutation pay." Such is the evidence in support of the claim of Colonel William Grayson to commutation pay, as a deranged officer on the 1st of January; and, as there is no reasonable ground for doubt as to the truth of it, the opinion of the committee is, that the commutation pay claimed by the petitioners ought to be allowed to them; and a bill is accordingly presented with this report.

IN THE SENATE OF THE UNITED STATES.

MARCH 22, 1852.

Ordered to be printed.

Mr. DOWNS made the following

REPORT:

[To accompany bill S. No. 500.]

The Committee on Private Land Claims, to whom was referred the resolution of the legislature of Louisiana, requesting the grant of the Fort Jesup military reserve to that State, for the establishment of a seminary of learning, make the following report:

The letter from the Secretary of War shows that this reserve is no longer needed for military or other purposes, by the government; that it has been offered for sale, but that only a small portion of it, on which the buildings are situated, could be sold, except at the low price of ten cents per acre. This reserve is poor, pine wood land, of little value; but it is a healthy situation in the interior, near the line between Texas and Louisiana, and the legislature of the State considered it would be valuable as a site for a seminary of learning. It is of so little value to the United States, and as grants have frequently been made for such a purpose, the committee are of opinion that the grant ought to be made, and report a bill accordingly, and recommend its passage.

WAR DEPARTMENT,
Washington, March 10, 1852.

SIR: I have received your letter of the 19th ult., making inquiries as to the extent of the reservation at Fort Jesup, the extent and value of the buildings thereon, &c.

In reply thereto, I have the honor to inform you that the extent of the reservation was twenty-five sections, but a part of one of the sections (that on which the buildings are situated) was sold at public auction in the year —.

In the year 1849 the buildings were estimated at \$3,500. A few of them remain unsold, but they are of little value.

The site is neither used nor needed for military purposes, and it is the intention of the department to offer the residue of the reservation for sale. The lands are of but little value; the only offer made for them was ten cents an acre.

The department is not aware of any precedent for making a donation of the reservation referred to, for the purposes of education.

Very respectfully, your obedient servant,

C. M. CONRAD,

Secretary of War.

Hon. S. W. DOWNS,

Chairman Committee Private Land Claims, Senate.

IN THE SENATE OF THE UNITED STATES.

MARCH 22, 1852.

Ordered to be printed.

Mr. GEYER made the following

REPORT:

[To accompany bill S. No. 302.]

The Committee on Pensions, who were instructed by the resolution of the Senate of the 14th of January, 1852, "to inquire into the justice and propriety of awarding a pension to the widow of the late Brevet Brigadier General Belknap," report:

That a joint certificate, signed by Assistant Surgeons E. J. Bailey, A. B. Hasson and J. F. Brown, and dated "Camp Belknap, Red Fork of Brazos river, Texas, November 2, 1851," states the health of General Belknap to be such at that time, as not to permit him to proceed to the Rio Concho on the duty to which he had been assigned; and that his disease was "a camp dysentery, which threatened to assume a chronic character." Eight days after the date of this certificate, General Belknap died in an ambulance while endeavoring to reach Fort Gibson, as shown by the certificate of Surgeon J. M. Wells, dated December 6, 1851, who adds, "of disease contracted in the line of his duty, to wit: establishing posts on the Brazos, Upper Texas."

A letter from R. Jones, Adjutant General, dated January 21, 1852, in reply to inquiries made by the Commissioner of Pensions, briefly states the services of General Belknap; from which it appears that he has ably and faithfully served his country in the army for thirty-nine years, during which time he has been promoted, in the line, from a lieutenantancy to the rank of lieutenant colonel, and brevetted as follows: on the 1st of February, 1832, major by brevet "for faithful service ten years in one grade;" on the 15th of March, 1842, lieutenant colonel by brevet "for general good conduct in the war against the Florida Indians, and for securing by military operations and negotiations a large number of Indians;" on the 9th of May, 1846, colonel by brevet "for gallant and distinguished services in the battles of Palo Alto and Resaca de la Palma;" and on the 23d February, 1847, brigadier general by brevet "for gallant and meritorious conduct in the battle of Buena Vista, Mexico." The Adjutant General further states, that at the time of his death, "General Belknap was in command of his regiment and of the 7th Military Department, and was charged with the establishment of a line of posts from the western frontier of Arkansas in the direction of Doña Ana, Mexico;" and adds at the conclusion of his letter, that General (then lieutenant) Belknap participated in most of the battles of the Niagara fron-

tier in 1814, and received a wound during the night attack on Fort Erie, (August 15, 1814.)

In view of the long and faithful services of her husband, and his gallantry in action, and believing that he lost his life by disease contracted while in the performance of special duties which had been assigned to him, the committee have deemed it both just and proper to grant the widow of the late Brevet Brigadier General Belknap a pension, and herewith report a bill for that purpose.

IN THE SENATE OF THE UNITED STATES.

MARCH 23, 1852.
Ordered to be printed.

Mr. SHIELDS made the following

REPORT:

[To accompany bill S. No. 304.]

The Committee on Military Affairs respectfully report :

That since the termination of the Mexican war, the artillery has been so much neglected, that discontent and discouragement begin to prevail, at the present time, in that important arm of the military service. The men are declared to be exceedingly deficient in a practical knowledge of the duties of their profession, and especially in the duties that would necessarily and immediately devolve upon them, in a war with any maritime power. The officers of the artillery, with a candor that does them infinite honor, in circular letters addressed to the Secretary of War on this subject, admit and deplore the deficiency in their arm of the service, and point out, in a clear and satisfactory manner, the causes which led to it, and the changes required to render it efficient.

The exigencies of our extended frontier service, and the imperative necessity which compelled the department to make the whole military force as available as possible, to act against the Indians and protect the frontier settlements, and the additional circumstance that the artillery consists nominally of four regiments, under four colonels, making four distinct and separate commands, subject to no common and recognised head, will sufficiently account for the present neglected and almost disorganized state of that important corps.

To avoid all misconception on this head, we wish to state distinctly, that for the present condition of the artillery no blame or censure can justly attach to the department; to the General-in-Chief, who made every possible effort, under the circumstances, to preserve it in a state of efficiency; or to the officers of the corps, who, as a body, are as intelligent and energetic as any other body of officers of equal number in any service in Europe; but to the causes already alluded to, and to others, which it is unnecessary at this time to particularize.

There never was a time in the military history of the world, when so much attention was bestowed upon the instruction and improvement of artillery as at present. The extraordinary progress of the present age in arts and sciences is felt, to the fullest extent, in this branch of the military service. The military mind of Europe, and particularly of France, in the application of science and genius to the improvement and employment of

artillery, seems destined to effect a material change in the general conditions and arrangement for attack and defence, in future warfare. Surely, at this time, when the world resounds with military preparation, and the national armaments of Europe are on a larger scale than was ever known before in a time of peace, the United States would be blind and culpable to suffer this important arm of their national defence to fall into a state of neglect, from which even the energy and intelligence of our people might find it difficult to extricate it.

The providential geographical position of this nation gives it all the defensible advantages of a remote insular position, in respect to the other great military nations of the world. All that is necessary, therefore, for our permanent safety, is a small regular force, which should never exceed our limited internal necessities. The whole efforts of the nation should be directed, not to increase the quantity of this force, but to improve its quality, and to make it, both in its personnel and materiel, the most perfect of the kind in the world. It should be, in every particular, a *model army*—a nucleus, around which the nation could rally, in any great national emergency.

From the intelligent and enterprising character of our people, and their familiarity with, and habitual use of fire-arms from childhood, there is, perhaps, no nation in the world that could bring, at this day, as formidable an infantry force into the field, in any great emergency, as the United States of America. A great portion of our people, too, being excellent horsemen, can be readily converted into efficient cavalry. But artillery is the work of time: its efficiency depends upon a high order of intelligence and careful instruction; and its perfection can only be attained by the zealous application to its service of the elements of *time, intelligence, and practice*.

As no nation except a great and wealthy maritime power will ever be likely to engage in a war with this country—and as no nation, or coalition of nations, will ever be able to transport an army across the Atlantic, which would not be liable to be overwhelmed in the first general engagement—our future military operations will, in all probability, be confined to the defence of our great cities, depots, and harbors; and therefore, the efficiency of our artillery is an object of the very first importance. The perfection of that arm should be such, (and it can easily be made such,) that every artillerist would be qualified to act as an instructor in any emergency; and thus, by the time any formidable force could reach our shores, after a declaration of war, we would be able to present an artillery-defence as efficient and powerful as any in the world.

The very knowledge of the existence of such a state of preparation will constitute our best security, and our strongest guarantee for permanent peace. At all events, it is our bounden duty not to be unprepared for future eventualities; and particularly as we can effect this desirable object without an increased expenditure.

The United States have now in service, nominally, as artillery, forty-eight companies, embodied into four regiments. Of these, two companies only are mounted, and serving as field artillery; and the remainder are, for the greater part, armed, equipped, and disciplined as infantry. They are thus deprived of any opportunity of acquiring that knowledge which is absolutely necessary for the defence of our coast in time of war—which includes the use of heavy artillery in all its forms, and especially the use of shell-guns of different kinds, whose recent improvement and general use

have complicated the service of this arm. Great care and skill are now required in the preparation of the different species of munitions; in the arrangement of shells for efficient use; in the repair of carriages, and the re-establishment of guns dismounted by accident or the enemy's fire; and especially in rapid loading, and precision in fire, which can only be acquired by application and practice, and which are more necessary and essential than ever, owing to the celerity with which steamers, or vessels towed by them, can pass, independent of wind and tide, to the object of their attack.

In addition to all this, there is the use of artillery in field and siege service, in which our troops will soon become lamentably deficient, without competent instruction and practice. It is only within a few months that even a system of instruction in the manual exercises of the heavy artillery has been given to the army; for which the service is indebted to the General-in-Chief, under whose orders it was compiled by a board of officers.

There are still other important duties belonging to the artillery, of which ours, under the present system of arrangement, can acquire no practical knowledge; such as the construction of their own batteries in field-works of siege, including the parapets, embrasures, platforms, magazines, &c. This is an essential part of the duty of artillery, and yet ours is even incapable of assisting the engineers in a duty which is essentially their own.

In reference to the light artillery, and its importance, but little need be said in this report. The part it recently played in the Mexican war, from Palo Alto to the Garitas of Mexico, attracted the attention and admiration of the country; and yet, of the eight companies authorized by law, two only are now in service as light artillery. The batteries of the remainder are thrown aside, and the officers and men are in service as infantry, forgetting the knowledge and proficiency that told so well for their country's honor on the battle-field of Mexico.

The condition and efficiency of the artillery, as an arm of the military service, may be taken as the best test at any time, and as a certain test at the present time, of the military efficiency of the nation to which that service belongs. Regarding this as the best test, France has, at this hour, the best instructed and most efficient military service in the world; and Europe will be made to feel this, in the event of a general war.

If the present condition of our artillery be taken as a test, ours might be considered the most inefficient and worst managed military service in the world. But as this nation is anomalous in many respects, so it is in this; and the foreign nation that should presume upon this inefficiency, would be likely to receive a severe and instructive lesson. The personnel of our artillery, so far as it consists of the corps of artillery officers, is, in point of intelligence, scientific knowledge, and preparatory instruction, equal, as a body, to the officers of any other service, not even excepting the French; and with equal opportunities for practice and improvement, owing to the practical energy and inventive genius of our people, they would surpass, in general efficiency, any other equal number of artillery officers in the world. It may well be conceived with what mortification the officers look upon the disorganized and dilapidated state of the artillery, and the anxiety they feel to be placed in a condition where they may be able to prove to the world that their talents and enterprise are worthy of their country. It must be gratifying to the American people to see the officers of the army, instead of concealing the defects of the service from the public, the first to point them out, and to call aloud for assistance and reform.

This is the spirit which should animate Americans in every branch of the public service, whether civil or military, and without which the public service is liable to become almost as much neglected and badly managed in a republic, as under any other form of government.

The first essential to improve the condition of the artillery, and render it efficient, is *unity*. This is the first essential in every kind of military service, and is indispensable to the artillery. The committee, therefore, propose to give it a directing head; and to make that head, who ought to be one of the most efficient officers in the army, responsible for the condition and efficiency of this branch of the service. It is now a body without any head—or rather, it has as many heads as it has regiments; but there is no one whose duty it is to superintend its management, supervise its instruction, and diffuse life and energy into the whole, as a distinct corps of the army. The next measure is to authorize the chief of artillery, under the direction of the President, to separate, or rather eliminate, from the present artillery force, a sufficient number of officers and companies to constitute a competent corps, for instruction, practice, and improvement, in every species of artillery service; and to employ the residue as cavalry, or as infantry companies, for the defence of the frontier, and the protection of our citizens against the depredations of the Indians. This new arrangement will not diminish the general efficiency of our little army for frontier service, and will not increase its expense; and yet, simple as it is, it will render our artillery disciplined and efficient, and keep it in a state of readiness, by which it can be expanded, in any emergency, to any extent commensurate with the wants and wishes of the nation.

IN THE SENATE OF THE UNITED STATES.

MARCH 23, 1852.

Ordered to be printed.

Mr. SHIELDS submitted the following

REPORT:

[To accompany joint resolution S. No. 27.]

The Committee on Military Affairs respectfully report:

That, during the last war with Great Britain, great loss and suffering had been experienced in consequence of the unprotected condition of our coast. At the close of the war, Congress, having their losses still in lively remembrance, and also recollecting the protection which had been afforded even by small and incomplete works, determined to take up the whole subject of national defence, and adopt a system suited to the wants and necessities of the country. Accordingly, in 1816 a board was organized, and General Bernard, a distinguished French officer, versed in the science and knowledge of foreign services, and having the prestige of a great reputation, was assigned to the board as an assistant. The board submitted a comprehensive report, giving their views in full, with estimates, in many cases conjectural, as to all the works which would be required in the defence of the coast. They divided the works into six classes—A, B, C, D, E, and F—according to their supposed comparative importance. This report received the sanction of the government, and Congress made annual appropriations to carry it into effect. The appropriations, which were at first *general*, were in 1821 made for *specific* works, and the system thereby came under the close supervision of Congress. No new work could be thenceforth commenced till plans, made by the board of engineers, and approved by the Chief Engineer and Secretary of War, were submitted and approved by both branches of Congress.

This, therefore, is the system that has been pursued:

1st. A general report, pointing out all the positions which, in the whole future of the country, would probably require defence, with estimates more or less approximating to the truth as regarded cost, garrisons and armaments;

2d. Specific studies of localities by special boards, with detailed plans and estimates of works;

3d. The approval of the same by the Chief Engineer and the Secretary of War; and,

4th. The approval of the military committees of Congress, and an express law authorizing their construction.

In class A are the old works existing at the close of the last war with England. In this class are enumerated forty-two works defending twenty-

four different points. Of these, only thirty works, defending sixteen different points, have been touched, viz: Portland, Me; Portsmouth, N. H; Boston, New Bedford (small open battery of nine guns,) New London, approaches to New York (several works,) Delaware river (Fort Mifflin,) Baltimore, Annapolis, Potomac river (approach to Washington,) Cape Fear river, Charleston harbor, Savannah river, St. Augustine, Pensacola, and New Orleans. Many of these works were retained in spite of defective plans and bad locations, in order, at small expense, to provide partial defences at an early date. They were found in most cases totally inadequate to the purpose, and every one of the positions above mentioned was designated by the board as requiring new works.

In class B are works which were first commenced under the new system, and which are now so near completion as to be able to receive their armaments. These works provide for defence, at positions where the old works, if they exist, have not been repaired—as Narragansett Roads, Hampton Roads, Beaufort harbor, N. C; entrance to Mobile bay; or at points where the old works, though repaired, were entirely inadequate—as Boston, the approaches to New York, Cape Fear river, Savannah river, Pensacola, and the approaches to New Orleans.

In class C are ten works which have been commenced at a comparatively late period—seven since 1843. They provide defence for the Penobscot river, an important avenue leading to several large places, and to a projected railroad system connecting Maine with the British provinces; for Cumberland sound, Ga., on the flank of the Gulf-stream, and in the track of an immense navigation passing from the Gulf to the North, and to Europe; for Key West and Garden Key, emphatically the keys of the Gulf, and destined to control the commerce of the Gulf in any contest with a great naval power; Delaware river, (the old work, Fort Mifflin, being certainly inadequate,) approaches to Baltimore, Hampton Roads, Charleston harbor, Pensacola, and Mobile bay.

Thus along our immense Atlantic coast, of over two thousand miles of coast line, only eighteen points have yet been touched in our system of defence; and on the Gulf, with a coast line of sixteen hundred miles, only five points. They are indeed the points of vital and commanding importance; embracing our largest cities, our best harbors, and our naval establishments, several of which have been provided with two or more works, and one—New York city, the great centre of our Atlantic commerce—with quite a system of works.

There have been expended, in the repairing or renewal of works in class A, about three and one-half millions of dollars; in the construction of works in class B, about thirteen and one-quarter millions of dollars; and in class C four millions. To complete all the repairs of class A, (many of which will be undertaken, as before observed, only on the occurrence of hostilities,) will require, according to the official estimates, about three-quarters of a million; to finish the works in class B, about half a million; and those in class C about five millions. In round numbers, about twenty and three-quarters millions have been, and six and one-quarter millions are to be, expended on other works; being twenty-seven millions in all. Sixty-nine works are included in these three classes, requiring 6,093 guns, and war garrisons of 29,725 men.

In regard to the works included in the three remaining classes, it is not proposed to touch the greater part of them till a very remote period, when

the population and business of the country shall have vastly increased, and the positions indicated for defence shall have risen into importance.

Many of the estimates for these works are presented rather to give a full view of the subject, and show what probable expenditures the system will involve through a long course of years, than to designate with certainty the exact positions to be defended. The relative importance of places varies. The channels of trade vary. When places rise into importance, the necessity of defence will be considered, and the necessary plans made and submitted to Congress. There are points, however, in regard to which it may be safe to affirm, that works will be required at a comparatively early date: at the entrance of the Kennebeck river, an important avenue on the coast of Maine, leading to many populous places, and connecting with a system of railroads, which, in the event of war, would be relied on to bind together the extended territory of Maine; thrust out, as she is, into the very heart of the provinces, and making, as she does, communication from those on the Atlantic to those on the lakes very difficult during six months in the year.

A new work will be required at Fort Scammel; otherwise a naval power may seize Portland and secure the railroad to Montreal. Portsmouth, having a great naval establishment, and a harbor never closed with ice, may require additional protection. Additional works have been already specially recommended for New Bedford, the third city in the Union in point of registered tonnage.

On the northern frontier, three new works have been commenced: Fort Montgomery at the outlet of Lake Champlain; defensive works and barracks at Buffalo; and a new fort and barracks at Detroit. Two old works have been partially repaired: Fort Ontario, Oswego, and Fort Niagara, defence of Niagara river. Three old works are proposed to be retained and repaired: Fort Gratiot, at the outlet of Lake Huron; Fort Mackinaw, at the junction of Lake Michigan with Lake Huron; and Fort Brady, at the straits between Lake Superior and Lake Huron. These works will mount 455 guns, involve war garrisons of 2,600 men, and an expenditure of less than a million and a quarter of dollars.

Objection, from time to time, has been made to this system, that it is obsolete and antiquated, not suited to the wants of the country; that it has not received the modifications required by recent improvements in vessels and projectiles, and by the vastly increased facilities, through the railroad and telegraph, of concentrating military means; and that it is plunging the country into an unnecessary expense. So impressed was Congress with this apprehension, that it refused, at the last session, to pass the usual appropriation bill, and called upon the Secretary of War to report in relation to it. The Secretary called upon several distinguished officers of both the army and navy, for their views, and transmitted their reports, with his own, to Congress. By reference to these reports, and to the previous reports of General Cass and of the Engineer department, it will be found that there has been a general agreement as to the *principles* that should govern in the selection of points for defence. It will be found, too, that there is less difference than has been supposed, as to the principles that should govern in the magnitude and character of the defences proposed for particular points.

In regard to the points which should be defended, General Cass, in his able report, in 1836, says: "I think every town large enough to tempt the

cupidity of an enemy should be defended by works, fixed or floating, suited to its local position, and sufficiently extensive to resist such attempts as would be made against it." And again: "All the harbors and inlets upon the coast, where there are cities or towns, whose situation and importance create just apprehension of attack, and particularly where we have public naval establishments, should be defended by works proportioned to any emergency which may probably occur." General Totten, in his able report, says: "They (the forts) are required by sudden action to defend the passage of a river or channel leading to important objects, or to prevent an enemy's squadron from seizing, cannonading or bombarding ships, navy-yards, cities, &c., duties to be accomplished only by heavy artillery in its various forms."

The present Secretary of War takes the same view, observing "that the difficulty does not lie so much in finding a rule, as in applying it to a particular case." Thus General Cass disapproved of several of the works recommended by the board of engineers; and the present Secretary of War is "of opinion that many of the works in classes D, E, and F, particularly in the last two classes, might, and ought to be dispensed with." Boards, even of professional men, where so much is left to conjecture, differ in this respect. A partial remedy will be found in not going beyond the consideration of positions *now* of sufficient importance to require defence, and leaving works for other positions to the times that really require them.

As regards the magnitude and character of works for particular positions, there is a wider field of discussion than in the selection of localities for defence; for in this question is involved the parts which floating batteries and vessels of war must play in the question of defence. On certain points there is a great unanimity of opinion, in all the reports, and the field of discussion is very much narrowed. It is admitted that steam-batteries and floating defences, unless in exceptional cases, should not be relied upon. It is also admitted that the recent improvements in projectiles are in favor of forts. Shells, which are harmless against a stone-wall or an earthen parapet, do great injury to vessels. It is more difficult to arrange platforms for heavy guns on shipboard than on land, and they are more liable to disarrangement and miscarriage.

As regards steam-vessels, they move with great celerity; they can strike the coast at any given point, and pass a work in a very short space of time. But they are more vulnerable than sail-vessels, and might be disabled by a single shot. It seems to be admitted that the greater vulnerability of steamers nearly, if not quite, compensates for their greater celerity of passage; and that the introduction of steam, in the present condition of steam-vessels, has but slightly, if at all, impaired the efficiency of forts in preventing a passage.

What are the principles, therefore, that ought to regulate the strength to be given to works? Now, these works *may* have two distinct offices to perform. They must have batteries in the water-front to prevent the passage of ships. Recent improvements in steam navigation, make it necessary to strengthen and enlarge these batteries; arming them with the heaviest guns. They must have strength enough on the land fronts to hold out against any force which is likely to be brought against them till succor arrives. The increasing facilities of transportation, enabling us more rapidly to concentrate men and munitions of war, enable us also to diminish the strength of these land-fronts. It is necessary that, in all cases, there should

be at least strength enough to resist a coup-de-main, and compel an invading army to incur the delay of landing heavy guns, and of placing them in position against the works.

There are undoubtedly positions which ought to be protected against siege; as the most important harbors of the Pacific coast; the keys of the Gulf, to wit: Key West and Garden Key, commanding the vast commerce of the Mississippi valley, and controlling the course of the Gulf-stream. The works now being constructed at these latter points are admitted, on all sides, to be necessary, and they should be finished without delay.

Although much misapprehension has existed in the public mind, as to the undue development of works, (and great injustice has thereby been done, both to the corps of engineers and to the several Congresses that have sanctioned their recommendations,) still, there can be no question that several of our works are of unnecessary size, and that strength has been given to them not even called for at the time they were planned. Such was the opinion of General Cass in 1836, and such is the opinion of the present Secretary. This is admitted in the case of Fort Monroe, by the Chief Engineer, General Totten, as will appear by the following extract from his report: "When the system of coast defence was about to be taken up, it was thought best, by the government and Congress, to call from abroad a portion of that skill and science which a long course of active warfare was supposed to have supplied. Fort Monroe is one of the results of that determination. It was not easy, probably, to come down from the exaggerated scale of warfare to which Europe was then accustomed; nor for those who had been brought up where wars were often produced, and always magnified by juxtaposition or proximity, to realize to what degree remoteness from belligerent nations might diminish military means, and qualify military objects. Certain it is, that this experiment, costly as it was in the case of Fort Monroe, would have been much more so, but for the opposition of some whose more moderate opinions had been moulded by the circumstances and wants of our own country. The mistake is one relating to magnitude, honor; not to strength. Magnitude in fortifications is often a measure of strength, but not always, nor in this instance. Fort Monroe might have been as strong as it is now against a water attack, or an assault or a siege, with one-third its present capacity, and perhaps at not more than half its cost. I do not think this work too strong for its position, nor too heavily armed; and as the force of the garrison will depend mainly on the extent of the armament, the error which has caused an excess in the first outlay will not involve much useless expense after completion."

Fort Warren, Boston harbor; Fort Adams, entrance Narragansett roads; Fort Schuyler, defending the eastern entrance New York harbor, are also alleged to be too large. A similar objection has been made to the projected works on Sandy Hook.

During the last few years, however, our engineers have been resorting to smaller and cheaper constructions, in view of the vastly increased facilities of concentrating military means. The plan of Fort Knox, as made in 1823, had double works on the land front; two ditches had to be crossed, and two walls to be scaled. In 1843 the plan was essentially modified and reduced, the crown work being dispensed with, and the width of the ditches diminished; and, on this reduced scale the work is now being constructed. The works at Fort Winthrop, Governor's island, Boston harbor; at Black Rock near Buffalo, and those proposed at Proctor's Landing, are

simply towers, with guns in the covered way or in water batteries at commanding points. The guns at Fort Clinch, Cumberland sound, Georgia, and Fort Gaines, Dauphin island, Alabama, are not placed in water batteries, in consequence of the lowness of the ground, but on the parapets of the work. The new work on Soller's Point is on a shoal about half a mile from shore, where special arrangements are not necessary to resist siege.

In both France and England, the system of coast defence as laid down by their acknowledged authorities is, that each important city and naval establishment shall be enclosed by a continuous work, with forts thrown out well into the field, so that the place shall not be exposed to bombardment from an invading army; that towns and harbors of secondary importance shall also be provided with works that will secure them against bombardment; and that a system of batteries and towers shall be applied to the third class. In France, this system has been carried out with great care. In England, not to the same extent; though, on the southern coast, supposed by her to be open to an invasion, the few harbors that offer sufficient facilities for the attempts of an invading army, have been fortified with great care and with great expense. Chatham, Dover, Portsmouth, Plymouth, are provided against siege, and a description of works has been there constructed, entirely unknown in this country. England, from 1848 to 1850, expended \$1,300,694 upon her coast defences, and the government has recommended \$6,600,000 more to complete existing fortifications, and to supply them with artillery and stores; and yet, her ablest military men, not content with this, are still urging the importance of additional defences.

In the United States, works have simply been planned and constructed, to cover harbors and anchorages; to close the entrance to rivers, and the water approaches to cities and naval establishments, and great lines of communication. The European system of fortresses, enclosing cities and naval establishments, is here entirely unknown. We have no defences of the magnitude of Toulon, Havre, and Cherbourg, in France; or of Chatham and Portsmouth, in England. Relying on our favorable geographical position, we propose, in our system, simply to compel an enemy to land at a disadvantageous point, and to march a considerable distance before he can reach his object; trusting to the delay thereby occasioned, to bring a relieving force, and, with the aid of field-works thrown up after the declaration of war, to beat him back to his ships.

New York, now teeming with three-quarters of a million, and soon destined to exceed London in population, wealth, and resources, has not the defences of a second-rate place in Europe—as Cherbourg, with 20,000, or Portsmouth, with 50,000 inhabitants. Our largest works have simply the size of the advanced works in European systems.

The principles of defence, however, which have guided the governments of Europe, are in every respect inapplicable to our coasts. We rest on two oceans, fronting both Europe and Asia. Our communication from ocean to ocean is through the Gulf and across the Isthmus, and we must have a naval preponderance both in the Gulf and on the Pacific; or, in case of war, our vast empire will be liable to be cut in two, and our western half left to the slow and uncertain succor to be conveyed by a three months' land route. Our commercial interests on the Pacific will require a great naval depot at San Francisco, and those of the Gulf another depot

at Garden Key, closing the narrow Florida pass, and controlling the course of the Gulf-stream.

The defences of Garden Key, already commenced, should be completed without delay; and those for San Francisco, where all the navies of the world can ride at anchor—the place and refuge of our Pacific whaling fleet, and the destined port of our Asiatic trade—should be provided for as speedily as possible. Works like these, which are absolutely necessary, should be completed without delay.

The question of our national defences is one of vast magnitude and importance,—which, in the event of a war, may affect the great interests of commerce, and the honor and the safety of the nation. If the present system be defective, as we think it is in some respects, then it is our duty to improve it. If it be too extensive for our present wants and resources, as we think it is, then it is our duty to limit and restrict it. If it be too extravagant, we ought to retrench the expenditure, and limit it to works of unquestionable importance: but a blind and reckless abandonment of the system, at this advanced stage of its progress towards completion, is an act of folly, which would leave the country almost as much exposed to insult and injury as if no system had ever been commenced.

The committee therefore respectfully recommend that appropriations be made during the present session for the construction of works in those localities, and in those only, which require immediate and indispensable defence—such as San Francisco and Garden Key, or the Tortugas,—and that, in accordance with the judicious recommendation of the present Secretary of War, the President be authorized to constitute a board—to be composed of three civilians, three engineer officers of the army, and three officers of the navy—whose duty it shall be to examine the whole subject, and determine the localities to be defended, and the nature and character of the constructions. And in performing this task, they ought to be instructed to devote all their energies to the limitation of the present system, and to the retrenchment of the vast expenditure contemplated by it, so far as the same can be done consistent with the efficiency of the national defence.

IN THE SENATE OF THE UNITED STATES.

MARCH 23, 1852.
Ordered to be printed.

Mr. BRODHEAD made the following

REPORT:

[To accompany bill S. No. 303.]

The Committee of Claims, to whom was referred the petition of Santiago E. Arguello, report :

The petitioner was a wealthy and influential inhabitant of California, residing in the vicinity of San Diego. On the invasion of that country during the Mexican war, and on the appearance of the proclamation of Commodore Stockton, then in command of that division of the American forces, Arguello placed himself at the head of a company raised through his influence and exertions, and immediately joined the United States forces, and fought with distinguished bravery and effect in several actions, under the command of Commodore Stockton, who fully attests his gallantry, and the importance of his services.

On the 25th November, 1846, he was appointed by Governor Stockton a captain of riflemen in the California battalion, and on the 16th January, 1847, a member of the Legislative Council of that Territory.

In consequence of his attachment to the cause of the United States, and the zeal and activity which he manifested in their service, his *rancho* was ravaged and laid waste, his buildings burnt, and his cattle and other movable effects taken away by the enemy, by which he appears to have been reduced from competence and wealth to penury and dependence.

A commission, appointed by H. Fitch, esq., alcalde of San Diego, to examine and report upon the losses of Arguello, state, under oath, and after a personal examination, that the personal property thus destroyed by the enemy amounted, "at the lowest value," to \$14,888. The items are as follows, viz :

472 tanned deer-skins, at \$2-----	\$944
24 " cow-hides, at \$6-----	144
20 mares, at \$10-----	200
500 head of cattle, at \$20-----	10,000
250 sheep, at \$4-----	1,000
42 horses, at \$50-----	2,100
100 pigs, at \$5-----	500

Total ----- 14,888

These prices of the horses and cattle may have been somewhat enhanced by the demand growing out of the military operations; and the committee have therefore deemed it proper to reduce the valuation of the horses from fifty dollars to thirty dollars each, and of the cattle from twenty dollars to fifteen dollars a head, reducing the total amount to \$11,548, which sum the committee think should be paid.

On leaving California, Governor Stockton, who rendered such valuable, important, and arduous service in that then distant and almost unknown Territory, addressed a communication to Arguello, in which, after acknowledging his services, sacrifices, and losses, he says: "I hope—nay, I have not the least doubt—but that the losses which you have sustained will be reimbursed by the government of the United States."

The annexed letter of Commodore Stockton, in answer to inquiries from the committee, is made a part of this report, and referred to, as containing a very satisfactory statement of the important services of Mr. Arguello, and of the nature and extent of his losses; and in view of all the circumstances, it is deemed to be the dictate of sound policy, as well as of justice and equity, that he should be protected, at least to the extent proposed in the accompanying bill, from the ruinous losses resulting solely from his devotion to the honor and interests of this government.

The policy of the United States, in remunerating those who have testified attachment to our cause and our institutions, by forsaking the cause of an enemy, and risking their lives and property in our service, was sanctioned by the early action of the government. In 1818, a committee of the House of Representatives made a report on a claim of this nature, in which they say: "If the liberal policy heretofore pursued by the United States is continued, it would not require much calculation to predict its effects, in the event of another contest." The Senate Committee of Claims, at the second session of the twenty-first Congress, in their report (No. 30) in the case of John Daly, a Canadian refugee, adopt the same principle, and recommend relief, which was granted to the amount of five thousand dollars, "for supplies furnished and assistance rendered to the army of the United States in Canada," &c.

In accordance with these views, the committee report a bill, and recommend its passage.

WASHINGTON, *March 5, 1852.*

SIR: I have received your letter of February 13, ultimo, requesting me "to state" my "personal knowledge of the facts set forth in the petition of Santiago E. Arguello," and also my "opinion in regard to the propriety of paying the whole or any part of his claim."

In answer to your inquiries I reply, that I have no doubt of the truth of the facts on which the claim of Santiago E. Arguello is founded. The losses which he sustained in consequence of his adhesion to the American cause were great, and in my estimation would not be overpaid by giving him the sum of \$14,888. His services were most meritorious. He served gallantly under me, during my campaigns in California; and it would be no more than justice that he should receive the full amount of his claim. In justification of this opinion, I must add:

1st. Don Santiago E. Arguello was one of the first, after my proclamation, to espouse the American cause, and take up arms in its defence.

2d. He assisted in taking and holding San Diego under the American flag.

3d. He raised a company, and served under me during the whole campaign.

4th. He fought most gallantly, side by side with me in every battle, always distinguished.

5th. By his enterprise and boldness he contributed, more than any one else, to supply me with cattle and animals for transportation purposes.

6th. He exercised a powerful and salutary influence in harmonizing and reconciling the Californians to the change of flag.

7th. His family were driven from their home; his house pillaged and burnt; his numerous flocks and herds destroyed; his peons scattered and driven off; his enclosures and growing crops wantonly laid waste; and not a vestige of his perishable property left. Thus, at the end of the war he found himself rich in honors, but a houseless, homeless, and poverty-stricken man.

Permit me further to say, that you will see, by reference to bill No. 8, of the Senate, that if that bill should become a law, it will not cover the case of Don Santiago E. Arguello, but that special legislation will be required for his indemnification.

Yours respectfully,

R. F. STOCKTON.

HON. RICHARD BRODHEAD,

Chairman of Senate Committee of Claims.

IN THE SENATE OF THE UNITED STATES.

MARCH 23, 1852.

Ordered to be printed.

Mr. FOOT made the following

R E P O R T :

[Considered by unanimous consent, and concurred in.]

The Committee on Pensions, to whom was referred the petition of Avery Downer, report :

That the petitioner claims a pension for services alleged to have been rendered during the revolutionary war as a surgeon's mate. His petition has been before the House of Representatives, and on the 7th of February, 1850, the Committee on Revolutionary Pensions made a favorable report thereon, accompanied by a bill, granting him a pension of \$140 per annum. In that report the committee state that they are "satisfied that the petitioner was a surgeon's mate," and "was employed in duties incident to said office at Fort Griswold and its vicinity, for a period of seven months from and after the 6th day of September, 1781, which service was regarded by the State of Connecticut as public service," &c.

After a careful examination of the evidence presented to the committee, they are unable to find any sufficient proof that the petitioner ever received the appointment of surgeon's mate, or that his services at Fort Griswold were regarded by the State of Connecticut as having been rendered in the capacity of a surgeon's mate. The committee therefore ask to be discharged from the further consideration of said petition.

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1852!

Ordered to be printed.

Mr. MILLER made the following

REPORT :

[To accompany bill S. No. 306.]

The Committee on Finance, to whom was referred the petition of the West Feliciana Railroad Company, have had the same under consideration, and beg leave to adopt and submit the report which was made by the Committee on Finance on the same petition on the 18th of June, 1850.

IN SENATE—June 18, 1850!

The Committee on Finance, to whom was referred the petition of the West Feliciana Railroad Company, praying that the duties on a quantity of railroad iron imported by them may be refunded, report :

That it appears from the papers laid before the committee, that in the month of July, 1836, a certain quantity of railroad iron was imported and landed at the port of New Orleans for the use of said company, of which a certain portion was shipped for transportation for the port of Bayou Sara, on the Mississippi; and on the passage up the river, the boat carrying the iron was sunk, and the iron irrecoverably lost. It further appears from the papers, that on the 25th of July, 1836, another quantity of railroad iron was imported and landed at New York for the use of the company, upon both which parcels the company gave their bonds for the payment of duties conformably with the provisions of the act of the 14th of July, 1832, chapter 836; that said company proceeded with all due diligence, and in good faith, to lay down the said railroad iron on the tracks as fast as the line of communication could be opened; but that in consequence of serious obstacles having been thrown in their path by the difficulty of securing the right of way, which involved them in lawsuits and delay, they were prevented from laying down the iron within the period prescribed by the act of July, 1832.

In this state of things the company was sued on their bonds, and they now ask that the amount paid by them may be refunded.

Under these circumstances, the committee, finding that the company has acted in good faith; that all the iron has been scrupulously and faithfully applied, as designed by the law of 1832, think this case clearly falls wit

the spirit of the act just referred to ; that the delay in laying down the iron was not voluntary, nor in any manner the result of negligence on their part, but from obstacles which they could not control. They therefore report a bill granting to the company the relief they ask, and which they respectfully submit to the consideration of the Senate.

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1852.

Ordered to be printed.

Mr. ARCHISON made the following

R E P O R T :

[To accompany bill S. No. 397.]

The Committee on Indian Affairs have examined the memorial of Henry C. Miller and Philip W. Thompson, praying indemnity for Indian depredations, also the memorial of Jesse B. Turley, of the same tenor and to the same effect, and find the following facts established by competent testimony :

The memorialists, in the spring of 1847, started from the State of Missouri, with goods, wares, and merchandise, in wagons, bound for Santa Fe, New Mexico. Whilst on their way across the plains, they were attacked by Indians, supposed to be Osages, on the Arkansas river; the Indians succeeded in the attack, and took from the memorialists and drove off fifty-five oxen, forty-three of them the property of Miller and Thompson, the remainder the property of Turley. It appears that there was neither fault nor negligence on the part of the memorialists. The United States were at peace with all the Indian tribes on the prairies at that time. The memorialists were engaged in a lawful calling, and were lawfully in the Indian country. No attempt at reprisals has been made by the memorialists. The memorialists claim from the government, indemnity not only for the value of the property taken by the Indians, but all the damages which they suppose they have sustained in consequence of the act of robbery.

The committee are of the opinion that this case comes within the provisions of the law regulating intercourse with the Indian tribes, approved June 30, 1834, and that the memorialists are entitled to the benefit of its provisions, and nothing more; and therefore report a bill to enable them to have the benefit of said act.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1852.

Ordered to be printed.

REPORT

Of the Committee of Conference, on the disagreeing votes of the two Houses on the bill (S. No. 146) "to make land warrants assignable, and for other purposes."

The managers on the part of the Senate, on the disagreeing votes between the two houses, on Senate bill No. 146, entitled "An act to make land warrants assignable, and for other purposes," have met the managers on the part of the House, and, after full and free conference, have agreed to recommend to their respective houses, to strike out the word "*act*," where it first occurs, in the third line of the first proviso, proposed to the first section of the bill by the House, and insert in lieu thereof the word *laws*; insert after the word "*located*," in the said third line of said first proviso, the words, *according to the legal subdivisions of the public lands, and in one body*; and with these amendments, they recommend that the Senate recede from their disagreement to the amendment of the House to the first section of the bill.

Strike out all after the word *warrants*, in the twelfth line of the second section, to the end of the section; and with this amendment, they recommend that the House recede from its amendment, striking out all of said bill after the first section.

JAS. SHIELDS,
ALPHEUS FELCH,
TRUMAN SMITH,

Managers on the part of the Senate.

G. W. JONES,
GEORGE BRIGGS,
GRAHAM N. FITCH,

Managers on the part of the House.

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1852.

Ordered to be printed.

Mr. NORRIS made the following

REPORT:

[To accompany bill S. No. 309.]

The Committee on Patents and the Patent Office, to whom was referred the petition of Isaac Adams, praying the extension of two patents granted him for improvements in the Power Printing Press, report:

It appears from the testimony that on the 4th of October, 1830, letters patent were granted to said Adams for improvements in the power printing press, and that on the 2d day of March, 1836, letters patent were also granted him for additional improvements on the same machine. Both patents have been extended at the Patent Office for the term of seven years each.

It also appears that the presses constructed according to the specifications of the two patents, and they have all been so constructed since 1836, are of great value and importance. The case shows that they are regarded by eminent engineers and machinists engaged in the manufacture of printing presses, as well as by the most eminent printers and publishers in the United States, as the very best power-press for book printing now in use, or which has been invented. To give the Senate an idea of the great ingenuity of the inventor in the construction of this press, the perfection of its work and its undoubted merits, the committee here copy from the emphatic testimony in its favor, contained in the depositions of Richard M. Hoe, the inventor of the unrivalled press for newspaper printing, and of Daniel Treadwell, late Rumford professor of applied science in Harvard University, himself the inventor of the first power platten press in use on this continent, the following statements.

Mr. Hoe says he is a mechanical engineer by profession, and for sixteen years has been specially engaged in the manufacture of printing presses, and has directed his attention especially to the progress of improvements in this branch of the arts in this country and in Europe; and has also obtained several patents for inventions of his own in this branch of the mechanic arts. He then adds that "the Adams press was the first successful, and is now the best power printing press for the best quality of work. That the production and reduction to successful practice of such an invention at that time, against all rival attempts and prejudices against power-presses, must have been attended with great difficulties, and must have required mechanical ingenuity and perseverance of a high order; and that the enterprise must have involved great labor and expense. That from his [my] know-

ledge of the progress of invention in this and other branches of the useful arts, this invention possesses the very highest claims to the protection of the public."

Professor Treadwell, after giving an account of his own invention, and of the great difficulties he encountered in introducing it into public use, says: "I consider his [Mr. Adams'] press as very valuable to the art of printing, and one of the most perfect and ingenious machines known. It has many advantages over every press in the compactness of form and arrangement of the operating instruments, and likewise in the additions of various parts which render it more complete and automatic in its operations. For book printing, where the great object is to combine in the production excellence of work with cheapness of cost, without regard to time or rapidity of execution, I believe this to be the best press in the world."

Testimony equally as emphatic in favor of this invention is given by John Harper, of the firm of Harper & Brothers, of New York; Nathan Hale, for thirty years printer, publisher and editor, of Boston; and many other leading publishing firms in our great Atlantic cities.

As to the great ingenuity, value and utility of the machine, the testimony before the committee is abundant and conclusive.

The testimony also shows that the petitioner encountered great difficulties in introducing his press into public use, and that he in fact derived but very little profit from it during the term of his first patent. The testimony further shows that Mr. Adams has never charged to purchasers of his press anything for the right to use the same, but has contented himself with a fair and reasonable profit upon the manufacture of the machines, and in that way he has received but a few thousand dollars for an invention which has been of more than a million of dollars value to the public according to the statement of some of the witnesses. As the rights secured to the patentee by his first patent seem to be necessary to the full enjoyment and protection of his rights under his second patent, the committee would have had no hesitation in recommending the further extension of his first patent to the 2d of March, 1857, when the extension of his second patent will expire.

But the petitioner asks the further extension of both his patents to the 2d of March, 1864, to enable him to realize a proper remuneration for his invention; and there are also petitions before the committee from many of the most eminent publishing houses in Boston, New York, and Philadelphia, all praying for the extension of the petitioner's patents to the year 1864, on the ground that they and those engaged in the publishing trade will, in that event, be able to obtain the best constructed presses at prices allowing the petitioner only fair profits for the manufacture, without charge for the right to use the press. They deem it an advantage to their trade and to the public that the manufacture should be continued in the hands and under the control of the petitioner. (See appendix.)

It further appears that the improvements in both the patents constitute but one machine as constructed since 1836. The committee, under all the circumstances, have come to the conclusion that the petitioner, considering the great merits of his invention, the difficulties he had to encounter in introducing it into public use, and the comparatively small profits he has realized from the sale, to recommend a further extension of said patents to the second day of March, 1860, reserving to all who may be lawfully in the possession and use of the machine, protected by said patents at the time of the extension, the right to continue the use of said machines during the additional extended term, and they report a bill accordingly.

APPENDIX.

To the Honorable Senate and the House of Representatives in Congress assembled:

Being informed that Isaac Adams of Boston, in the county of Suffolk and commonwealth of Massachusetts, has petitioned the Congress of the United States for the extension of his two patent rights on the power printing press to the year one thousand eight hundred and sixty-four, and being aware of the great value of said Adams' power printing presses to the public, and convinced that said Adams has been unable to obtain a reasonable remuneration for his invention and the introduction of said presses into public use, and that the time prayed for by said Adams is not more than he ought to have, the undersigned would respectfully express to your honorable bodies, their belief that justice to said Adams as well as a true regard for the public interests and the encouragement of the arts, requires that said Adams' prayer for the extension of his said patents be granted.

CHARLES C. LITTLE,
JAMES BROWN,
Firm of Little & Brown.

CHARLES HICKLING,
Printer and Publisher.

JNO. H. JENKS,
Publisher and Bookseller.

W. D. TICKNOR,
Bookseller and Publisher.

BENJAMIN BRADLEY & CO.,
Bookbinders.

Boston, February 4, 1851.

To the Honorable Senate and the House of Representatives in Congress assembled:

Being informed that Isaac Adams, of Boston, in the county of Suffolk and commonwealth of Massachusetts, has petitioned the Congress of the United States for the extension of his two patents on the power printing press to the year eighteen hundred and sixty-four, and being aware of the great value of said Adams' power printing presses to the public, and convinced that said Adams has been unable to obtain a reasonable remuneration for his invention, and the introduction of said presses into public use, and that the time prayed for by said Adams is not more than he ought to have, the undersigned would respectfully express to your honorable bodies their belief that justice to said Adams, as well as a true regard for the public interests and the encouragement of the arts, require that said Adams' prayer, for the extension of his said patents, be granted.

HARPER & BROTHERS,
D. APPLETON & CO.,
GEO. P. PUTNAM,
FREEMAN HUNT,
JOHN F. TROW,

THOMAS P. KETTELL,
Editor Democratic Review,
 FREDERICK SOMERS,
Superintendent American Bible Society Printing.
 NEW YORK, February 11, 1851.

T. K. & P. G. COLLINS,
 L. JOHNSON & CO.,
 KING & BAIRD,
 ISAAC ASHMEAD,
 THOMAS COWPERTHWAIT & CO.,
 E. H. BUTLER & CO.,
Philadelphia.

To the honorable Senate and the House of Representatives in Congress assembled :

Being informed that Isaac Adams, of Boston, in the county of Suffolk and commonwealth of Massachusetts, has petitioned the Congress of the United States for the extension of his two patent rights on the power printing press, to the year one thousand eight hundred and sixty-four, and being aware of the great value of said Adams' power printing presses to the public, and convinced that said Adams has been unable to obtain a reasonable remuneration for his invention and introduction of said presses into public use, and that the time prayed for by said Adams is not more than he ought to have; the undersigned would respectfully express to your honorable bodies their belief, that justice to said Adams, as well as a true regard for the public interests and the encouragement of the arts, requires that said Adams' prayer for the extension of his said patent be granted.

NATHAN HALE,
Editor of the Daily Advertiser, Boston.
 T. R. MARVIN,
Printer and Publisher, Boston.
 BEALS & GREEN,
Publishers of Boston Post.
 DUTTON & WENTWORTH,
State Printers for Massachusetts, and Publishers of Transcript.
 SCHOULER & BREWER,
Publishers of Boston Atlas.
 E. B. FOSTER & CO.,
Publishers of Boston Courier.
 SLEEPER & ROGERS,
Publishers of Boston Daily Journal.
 FERDINAND ANDREWS,
Editor of Daily Evening Traveller.
 JOHN EASTBURN,
18 State Street, Boston.

Boston, February 4, 1851.

ALBANY, NEW YORK,
February 10, 1851.

DEAR SIR: Your favour of the 7th, stating that you had petitioned Congress for the extension of the patent on your power press, came duly to hand this morning, &c.

I commenced running one of your patent power presses about five years ago, and have increased the number until I now have four in use.

I consider the press *the best book machine in use*, and would cordially sign a petition for an extension of your patent to the year 1864 if I had the opportunity, as I have no doubt a large majority of the trade would, if requested to do so.

My reason for favouring your petition for what might be termed *the extension of a monopoly*, is that while you had the manufacturing of the book presses for the trade almost without competition, you have not called on the printers to pay any thing more than a fair and reasonable price for your machines.

Wishing you success in your application, I remain

Yours, respectfully, &c.,

CHARLES VAN BENTHUYSEN.

Mr. ISAAC ADAMS, Boston.

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1852.

Ordered to be printed.

MR. FELCH made the following

R E P O R T :

[To accompany bill S. No. 128.]

The Committee on Public Lands, to whom was referred the petition of Jacob Banta, and also a bill for his relief, respectfully report :

That it appears, from the evidence presented in the case, that two revolutionary bounty-land scrip or certificates, numbered 3178 and 3182, under the act of the 30th May, 1830, were issued to Isaac Chapline, Jacob Roger Chapline, William B. Harrison, Abraham Chapline, Willis Chapline and Ann M. Chapline, only heirs and legal representatives of Abraham Chapline, deceased, bearing date October 3, 1831. Each of these entitles the confirmees to eighty acres of land, and is made assignable by endorsement thereon, attested by two witnesses.

These certificates are both covered with assignments, most of which appear to be cancelled or mutilated ; and the only question is, whether the petitioner is the true owner of them or not. An examination of the endorsements, however, shows that an assignment was made to Isaac Chapline, by Thomas G. Harrison as guardian for Burr Harrison, on the 10th July, 1832 ; by Jacob R. Chapline, to the same on the 12th September, 1832 ; and on the same day and to the same person, by Abraham Chapline, Willis Chapline and Ann Chapline, by their guardian Jacob R. Chapline. If these assignments are true and valid assignments, (and from the other testimony in the case, the committee are of opinion that they should be so regarded,) the title to the certificates was complete and perfect in Isaac Chapline on the 12th day of September, 1832. On the 13th of the same month an assignment was made on the back of each of the certificates, to Jacob Banta, signed by Isaac Chapline. All the above mentioned assignments are duly attested by two witnesses.

On certificate number 3178 follows under date of December 15, 1832, an assignment from Jacob Banta to John Butcher, and another on the 20th December, 1832, from John Butcher to Jacob Strawn ; and on the 11th May, 1833, a re-assignment from Jacob Strawn to Jacob Banta.

On the other certificate, numbered 3182, is an assignment under date of December 15, 1832, from the petitioner to Joseph Martin, and an assignment from said Martin to Robert Bird, dated January 23, 1833. These last assignments are cancelled. All the above assignments have two witnesses.

There is also another assignment written on each of the certificates, dated October 19, 1833, signed by Andrew Kyle, attorney in fact, for Isaac Chapline, Jacob Chapline and Thomas G. Harrison. This assignment has no witnesses, and is not, therefore, in conformity with the law which authorizes the assignment, as that law requires two witnesses to make it valid. The above view of the case, however, shows, if the other assignments previously made and duly attested by two witnesses are valid, that the title to the certificate had already passed from the family of the Chaplines, and they had no assignable interest on the last mentioned date. It is of little consequence, then, whether this assignment is in due form or not, as the title of the petitioner does not depend upon it, and must stand or fall upon the other evidences of right.

The whole transaction in the several assignments of these certificates is of the most inartificial character, and the endorsements are complicated, and many of them cancelled with the pen. The testimony, however, independent of the evidence on the certificates, shows that the petitioner is the true and just owner of the certificates, and that when, on account of the inartificial character of the endorsements, an objection to the location of land under it was made at the land office, the parties sought to return the certificate to the original holders, by cancelling the assignments. The death of some of the original parties, and the fact that the others were so dispersed as that their further action could not be obtained, prevented any arrangement of the kind being carried into effect. From a view of the whole testimony in the case, the committee are satisfied that the petitioner paid the full value of the certificates and is the true and *bona fide* holder of them; and although the paper title by which he holds them is inartificial, yet they are satisfied that no other claimant can assert any valid right under the certificates; and they believe that justice requires that the petitioner should be allowed to enter the land as specified in them. They therefore recommend the passage of the bill which has been referred to them.

IN THE SENATE OF THE UNITED STATES.

MARCH 25, 1852.
Ordered to be printed.

Mr. HAMLIN made the following

REPORT:

[To accompany bill S. No. 311.]

The Committee on Commerce, to whom was referred the petition of George Dennett, asking for compensation for services performed while he was naval officer at Portsmouth, New Hampshire, respectfully report :

That the said George Dennett was appointed naval officer for the port of Portsmouth, in the State of New Hampshire, and that he took the oath prescribed by law, and entered upon the discharge of his official duties on the 13th day of March, 1839. It also appears, from the memorial and a letter from the Secretary of the Treasury, that the said office of naval officer was vacant from the 18th day of December, 1838, until the 13th day of March, 1839, when the said Dennett was appointed and entered upon the discharge of his duties as aforesaid. It therefore became the duty of said Dennett, after he had entered upon the duties of his office, to complete and bring up the arrearages of business for the time it was vacant, and for that he has received no compensation; and in pursuance of the recommendation of the Secretary of the Treasury, and from the fact that, in the opinion of the committee, the said Dennett is justly and equitably entitled to a compensation for that service, the committee report a bill for his relief, which is herewith submitted.

IN THE SENATE OF THE UNITED STATES.

MARCH 25, 1852.

Ordered to be printed.

Mr. DOWNS made the following

REPORT:

[To accompany bill S. No. 32.]

The Committee on the Judiciary make the following report on the letters from the Secretary of the Interior on the accommodations of the courts of the United States:

For the reason stated in the letter of the Secretary of the Interior, and the letter of the marshal of Massachusetts, the committee are of opinion that the Secretary of the Interior ought to be authorized, by law, to lease for a term of years suitable buildings for the accommodation of the United States courts, and report a bill accordingly. It is proper to repeal the section of the act of 1825 giving authority over this subject to the Secretary of the Treasury in the southern district of New York, in order that it may in that district be vested in the Secretary of the Interior, as in all other cases.

DEPARTMENT OF THE INTERIOR,
Washington, February 25, 1852.

SIR: I have the honor to submit herewith, for the consideration of the Committee on the Judiciary, with a view to such legislation as may be deemed appropriate, a communication from the United States marshal of Massachusetts, respecting the want of proper accommodations for the United States courts in that district, and the officers connected therewith.

I would remark that the principal difficulty encountered by the department in procuring accommodations for the United States court in the larger cities, grows out of the 6th section of the act of May 1, 1820, which enacts "that no contract shall hereafter be made by the Secretary of State, or of the Treasury, or of the Department of War, or of the Navy, except under a law authorizing the same, or under an appropriation adequate to its fulfilment." In consequence of this law, it is not competent for the department to enter into a contract beyond the year for which the appropriation is made, and in the large cities it is found impossible to rent suitable accommodations for the courts, from year to year, without much inconvenience, and at a greater expense than would be incurred for the same building, were it rented for a term of years.

Offers have been made to the department by capitalists to erect buildings for the express accommodation of the United States courts; but the want of authority to lease them for a term of years which would justify the enterprise, has deterred them from engaging in it.

In connexion with this subject I would call attention to the fact, that while the act of 3d March, 1849, transfers to this department all the supervisory powers theretofore exercised by the Secretary of the Treasury over the accounts of marshals, clerks, and other officers of the United States courts, the Secretary of the Treasury, by the act of 3d March, 1825, still possesses the power of providing accommodations for the United States courts for the southern district of New York. This fact is referred to, so that, should Congress confer any authority upon this department in order to correct any existing evils, the act of 1825 may be repealed.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary.*

Hon. A. P. BUTLER,

Chairman of Committee on the Judiciary, Senate.

U. S. MARSHAL'S OFFICE, DISTRICT OF MASSACHUSETTS,
Boston, November 17, 1851.

SIR: I have deemed it my duty to address you in reference to the accommodations of the United States in this district in regard to its courts, as a matter which seems to call for attention from the department.

The United States at present occupy a portion of the court-house belonging to the county of Suffolk, the accommodations of which, although not ample, have yet answered the purposes of the judiciary, by means of the courtesy of the sheriff and other officers of the county, in extending to the officers of the United States the use of the rooms in their occupation, whenever those of the United States have been insufficient, as has frequently been the case. They have, however, been defective in some most important particulars; the most prominent of which are, that there is but one court-room, and the district and circuit courts, both with different judges, and often with juries, are frequently in session at the same time; again, that there is no room whatever for the use of the grand jury, and no room whatever for the courts of the commissioners.

During the last summer I was informed that it would be necessary that the United States should quit the rooms in its occupation in the court-house, and that an order was passed by the city government, that notice to that effect should be served upon the marshal, as the officer in possession. After some consultation with the mayor of the city, it was proposed, that if it could be understood that the United States would abandon the two rooms in the court-house, now occupied by the clerks of the United States courts, on the first day of January next, no formal notice to quit would be given, and the United States could at present continue its occupation of the other rooms. This proposition, after conference with the district judge, was assented to, as the best thing, under the circumstances, which could be done, and the matter so stands at present.

In January, therefore, the clerks of the United States courts will be compelled to leave the court-house, with their records, exposing them thus to

the dangers of fire, in buildings less calculated to resist it, as well as to the inconveniences of transportation of such portion of the records, to and from the court-house, as the business of the courts may require, or else will be forced to put up with accommodations utterly inadequate to either their wants or the business of their respective offices. It may be proper here to state that the United States has no executed lease of the portion of the court-house in its occupation. At the time of taking possession, a lease was drawn up, which was never executed, because the marshal did not consider himself vested with the necessary power. This paper is, however, in existence, and has been substantially acted upon by both parties; the rent having been paid by the marshal, and his account therefor passed at the treasury. Under these circumstances the situation of the United States courts seems to require the attention of the department, for the following among other reasons:

First, because accommodations inadequate, for the reasons before stated, are now to be still further reduced by the withdrawal of the rooms used for the clerks' offices, while the business of the courts of the United States in this district has increased immensely since provision in the court-house was made for them. As a fact illustrating this increase, it may be stated that the two judges of the district and circuit courts, who formerly held many sessions of the court together, are now obliged to devote themselves, except in special cases, each to the business of his own particular court, and of course require the accommodation of separate court-rooms.

Secondly, any accommodations in the present court-house of the county of Suffolk can be but temporary, as the wants of the county are such at this moment as to require the whole building, and the United States may at any moment be exposed to a notice to quit the portion now left to it.

Thirdly, it is of much importance to have a building where proper places of temporary confinement for prisoners, during the intervals of a trial, &c., may be provided. No such conveniences for the use of the United States exist in the present court-house; and this is at present a greater inconvenience, from the fact that jails of the State of Massachusetts used for the purpose of confining all other prisoners of the United States, cannot be so used for alleged fugitives from service or labor, who must at the same time be necessarily retained in the custody of the marshal during the intervals of the examination by the court or magistrate.

Fourthly, it would be exceedingly desirable for courts of the United States that the building occupied by them should have no other tenants than officers of the United States, so that it might be exclusively under their control. And should a building sufficient be procured, several officers of the United States, (not connected with the judiciary,) located here, such as the navy agent, &c., who have no fixed place for their offices in any of the public buildings, might be advantageously accommodated, in addition to those whose duties connect them immediately with the courts.

These considerations have been suggested to the department, because I cannot find that the embarrassments attending sessions of the United States courts here, can be removed by the officers here, with any of the powers they at present possess. The marshal does not seem to be vested with the necessary legal power to make any provision, other than the present one, for the courts, as it would be impossible to lease other rooms, requiring expensive fitting up, except upon the understanding that the United States would continue to occupy them for a reasonable length of time; an assurance which

that officer is not empowered to make. I cannot forbear adding, in conclusion, that I am very clearly of the opinion that it is a matter in the highest degree desirable, that the United States, in a district like this of Massachusetts, should possess its own court-house, with the proper appurtenances for the transaction of its judicial business, and I cannot but hope that such action may be had in the premises as will insure this result.

I am, very respectfully, your obedient servant,

CHAS. DEVENS, Jr.,
United States Marshal.

Hon. A. H. H. STUART,
Secretary of the Interior.

IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1852.

Ordered to be printed.

Mr. WALKER made the following

REPORT:

[To accompany bill S. No. 317.]

IN THE HOUSE OF REPRESENTATIVES—February 8, 1849.

Mr. BUTLER, from the Committee on Revolutionary Claims, made the following report:

The Committee on Revolutionary Claims, to whom was referred the memorial of the legal representatives of James Bell, late of Chambly, deceased, praying the balance due from the United States, have had the same, with the accompanying documents, under consideration, and make the following report:

The original merits of this claim have been heretofore examined by committees in the Senate and House, and reports fully setting forth the particular circumstances under which the claim arose, and scrutinizing its justness, have been made. The committee refer to a report made from the committee of the House by Mr. Young, January 16, 1834, and one by Mr. Leigh, in the Senate, February 2, 1835. No one can examine the documents and read these reports without being satisfied that the original claim was highly meritorious. The committee adopt these reports, and print them herewith.

On the 30th June, 1834, an act of Congress was passed for the relief of the heirs of James Bell, directing the proper accounting officers of the treasury to settle the several accounts of James Bell, late of Chambly, in the British province of Lower Canada, on equitable principles, for moneys advanced, services rendered, and for stores, materials and supplies, &c., &c.; with this proviso, however, that the sum to be allowed said heirs shall not exceed the sum of five thousand seven hundred and twenty-seven dollars and three cents. In pursuance of this act, the account was settled by the accounting officers of the treasury, and a balance stated to be due from the United States of \$27,147 54. This sum is made up of a balance of principal, \$6,056 34, ascertained on settlement by the officers of the Treasury Department of the accounts of James Bell, under the act of 1834, and interest on the same from the 15th June, 1776, the time of closing the account, to the 30th June, 1834, the time of the settlement and statement of the balance due, by the auditor, as appears from a certified copy of the account submitted to the committee.

By this act of 1834, the "proper accounting officers of the treasury" were

made the arbitrators between the claimants and the United States, and their decision is in the nature of a judgment against the party found to be indebted. Of the amount found to be due, the United States have paid a part only of the principal, and none of the interest. A balance of \$329 31 of the principal is unquestionably due, but the interest has not been allowed, because, it is said, the act of 1834 does not authorize it. The act of 1834 says nothing about interest, and therefore, in terms, does not exclude it; and the committee think that a settlement of the accounts in pursuance of that act would give the claimants interest. In the first place, the claim is of a highly meritorious character, being "for *moneys advanced*, services rendered, and for stores, materials and supplies of various kinds, furnished, &c., by him (James Bell) to the troops of the United States, and for the construction of vessels of war, and for wood for the garrison, including timber, taken to Ticonderoga, and excluding the charge for loss on continental money." Over two thousand dollars of the items allowed is for "money advanced," and the residue is for "supplies" principally. In the next place, the act directs that the accounts shall be settled "on equitable principles." This direction surely would not be complied with if interest were disallowed. It would be inequitable and unjust to refuse it. Debts due from individuals bear interest, and why should not the debts of the government? And in this case, in order to do justice, it is particularly necessary to allow interest, for it is the fault of the government, and not of the claimant, that the principal was not paid long since. The claim was presented as early as 1794, and faithfully pursued until at last a settlement was made and the balance ascertained, which balance was as justly due on the 15th June, 1776, as it was on the 30th of June, 1834, when the account was stated.

It is believed, also, that interest is due according to the laws of Congress and the practice of the Treasury Department. It is stated, in a compilation of the resolves and acts of Congress, called *revolutionary claims*, made by order of Congress, that, "by the laws or resolutions of the old Congress, *interest* was allowed on all claims, and to all creditors of the United States, from the time payment became due. There are a great number of resolutions of Congress to this effect. Reference is, however, particularly made to that of 3d June, 1784. See journals of old Congress, vol. 4, page 443." The resolution referred to is in these words, viz: "That an interest of six per cent. per annum shall be allowed to all creditors of the United States for supplies furnished, or services done, from the time the payment became due."

Many cases are enumerated in which interest has been allowed.

Nineteen cases, among which was the one now under consideration, passed the House of Representatives at the first session 24th Congress, with *interest*. These bills passed the Senate during the last two days of the session, but with regard to interest it was agreed, as it is said, that the interest should be stricken out, *without prejudice to the rights of the parties*, each to be adjusted thereafter according to its merits, or by general rule, if any should be adopted. On most of these cases interest appears to have been subsequently allowed; and in the case of James Bell, at the second session 23d Congress, a bill was reported in the Senate for the interest on the claim, but was not acted on. The bill was renewed the second session of the 24th Congress—passed the Senate, but was not finally acted on in the House.

It is stated in the compilation before referred to, which was made in pur-

suance of a resolution of 11th April, 1836, that seventeen hundred and fifty-four cases had been allowed *with interest*, and fifty-four without interest.

It appears, also, from a report of the Register of the Treasury, made in 1836, that all certificates of public debt issued by the register of the Treasury, by the commissioner of army accounts, and by the commissioners for settling the accounts of *individuals* in the several States, and in the quartermaster's, commissary's, marine, and clothing departments, for *services rendered* or supplies furnished during the war of the Revolution, or in fulfilment of promises contained in any ordinance or resolution of the old Congress, were on interest at six per cent. from the termination of the service, or from the time the supplies were furnished.

The committee being of the opinion that the balance of the principal, viz: \$329 31, and the interest as originally stated by the accounting officer, ought to be paid to the legal representatives of James Bell, report a bill accordingly.

IN SENATE OF THE UNITED STATES—February 2, 1835.

The Committee on Revolutionary Claims, to whom was referred the memorial of Daniel Cameron and Margaret his wife, legal representatives of James Bell, deceased, report:

That William Bell and the memorialist, Margaret Cameron, claiming, as the only children and heirs-at-law of James Bell, late of Chambly, in the province of Lower Canada, deceased, preferred their petition to the House of Representatives at the last session of Congress, praying remuneration and compensation for advances of money, supplies furnished, and services rendered by their father, James Bell, to and for the American army in Canada, from the fall of the year 1775, till June, 1776. The merits of the claim seem to have been examined very carefully by the Committee on Revolutionary Claims of that House, which made a full and detailed report on the subject. Upon the case stated in that report, the committee recommended, and the House passed a bill providing for the adjustment of the claim by the proper officers of the treasury, and for payment of the principal sum which should be found due, with interest thereon from the time when the debt accrued. When this bill came to the Senate, it was so amended as to provide that not more than \$5,727 03 of principal should be paid, and to disallow interest altogether; and with these amendments the act passed for the relief of the petitioners. Upon the adjustment of the account at the treasury, it was found that the principal sum justly due to the claimants was \$6,056 34, to which was applied the sum of \$5,727 03, appropriated by the act; leaving a balance of \$329 31 principal still due to the petitioners.

The memorialists now ask that the above balance of the principal, (\$329 31,) and the interest on the whole debt originally due them, computed from the time the claim accrued, may be allowed and paid them.

The report made by the Committee on Revolutionary Claims of the House of Representatives at the last session on this claim is hereto appended. By that report it appears that moneys were advanced, and sundry supplies fur-

nished by the said William Bell, deceased, to the American army in Canada, between the fall of the year 1775, and June, 1776; and that he also rendered personal services, exposing himself to great losses, to imprisonment, and jeopardy of life. That he took the earliest opportunity practicable to present his pecuniary claims to Congress. That probably the claim and the proofs of it were in fact lodged in the public offices shortly after the peace. That in 1794 Mr. Bell came from Canada to Philadelphia, to attend to the claim in person, and obtain payment of the debt due to him, and found at the treasury no obstacle to his claim but the then statute of limitations. That he thereupon applied to Congress for relief; and though the committee to which the claim was referred reported that, from the particular situation of the claim, and its high merits, the statute of limitations ought to be waived in regard to it, the session passed off without any provision being made for the satisfaction of it. That Mr. Bell afterwards appointed an agent to prosecute the claim for him, who frequently presented it to Congress. That in 1802 a very favorable report was made on it to the House of Representatives by Mr. Gallatin, then Secretary of the Treasury, to whom it was referred; but that report, after suggesting reasons for believing that Mr. Bell had used, perhaps, all means in his power to obtain an early settlement of his claim, referred the expediency of opening the statute of limitations back again to Congress. That the claim was again presented to Congress in 1810, and repelled only on the ground of the statute of limitations. That Mr. Bell died in 1814, and that his children never presented the claim until they found that the policy of the statute of limitations was no longer rigidly enforced, but, on the contrary, was entirely disregarded.

Upon this state of facts, approved as just and true by both houses of Congress in the act passed for paying claimants their principal, it seems to your committee that the government ought to have made provision for the satisfaction of the claim, with interest from the time it accrued, as soon as it was presented, which it is admitted was probably early after the peace. That provision ought to have been made for the payment of the principal, with like interest, in 1794, in 1802, and in 1810, when the claim was presented to Congress and its justice admitted. And that in rendering justice to the claimants at the late day at which it was at last proposed to be rendered to them, it behooved Congress to render full justice; that is, to pay the claimants the principal due to them, with interest thereon from the time the debt accrued.

Therefore, the committee report a bill, providing for the payment of the balance of the principal due the memorialists, and of the interest stated by the officers of the treasury to be due on the whole amount of the principal debt.

IN THE HOUSE OF REPRESENTATIVES—January 16, 1834.

Mr. YOUNG, from the Committee on Revolutionary Claims, made the following report :

The Committee on Revolutionary Claims, to whom was referred the petition of William Bell and Margaret Cameron, (wife of Daniel Cameron,) only children and heirs-at-law of James Bell, late of Chambly, in the province of Lower Canada, report :

This claim having been of long standing, and its merits, as presented, depending in some measure on the peculiar circumstances attending its origin, progress, and continuance, the committee deem it their duty to the House to give the facts connected with it somewhat in detail.

The petition states, in substance, that in the fall of the year 1775, when the advance of the army of the United States entered Canada, James Bell, the father of the memorialist, resided at Chamble, or Chambly, in that province, doing business as a merchant ; that when the troops entered the province, a proclamation, in the name of General Washington, was distributed amongst the inhabitants, desiring them to remain in quietness at home, or join the army and assist in the cause of liberty. The proclamation also invited the inhabitants to furnish " such supplies as the country afforded," and pledged, not only the government of the United States, but General Washington himself, in express terms, that " ample compensation " should be made.

Relying on the proclamation, and inclined to the spirit of freedom, Mr. Bell immediately attached himself to the cause and fortunes of the United States, and, during the night, assisted in raising those volunteers which it is well known constituted the principal force in the attack on Fort Chambly, and before daybreak joined the very inadequate force which had arrived there under Major Brown ; and, being well acquainted with the fortification, led the way in the assault, which soon terminated in the capture of the fort, and the surrender of the garrison, prisoners of war.

Mr. Bell having now forfeited the favor of the friends of the crown, and staked his all in the issue of the struggle, yielded not only his own personal services, but his whole means and credit, to aid and sustain the invading army.

General Montgomery, arriving there soon after, employed Mr. Bell in transporting his boats from Lake Champlain to the St. Lawrence, at La Prairie, and, before he left that vicinity, from a knowledge of his zeal, activity, and usefulness, constituted him a kind of public agent to superintend the artificers employed in repairing the fortifications there, and to procure the materials, and also to procure materials for building certain gondolas and other boats ordered to be built by a resolution of Congress, in which service he was afterwards continued by regular appointments, from General Wooster and other general officers, till the final departure of the United States troops from that place in June, 1776 ; during all which time, in addition to his personal services, he furnished supplies to the garrison of almost every kind, from his own store in the neighborhood, together with many materials for the purposes before mentioned, and for a considerable time paid the workmen, under his superintendence, out of his own funds.

And these services, supplies, and advances, together with the expense in the transportation of the boats to the St. Lawrence, as before mentioned, constitute the claim now under consideration. The representation that Mr. Bell assisted in raising the volunteers, and led the army in the assault, is not expressly stated in the testimony; but his zeal, activity, and readiness to *do* and *supply* every thing in his power, is very fully and distinctly proved, as well as implied from the language and nature of the correspondence with him while thus employed.

All the other representations which are in any way material to a general understanding of the claim, and its merits thus far, are confirmed by the history of those times; the proclamation of General Washington, on file with the petition, the correspondence of the officers of the army with Mr. Bell at the time, together with their special certificates to some of the larger items, and their general certificates since, embracing the whole time, and recognising their general correctness.

The petitioners (by way of showing that their claim ought not to be prejudiced because payment has been so long deferred) further state what is a well known fact, that our troops were unexpectedly under the necessity of abandoning and destroying the works at Fort Chambly, and other places, and of retreating with all despatch out of the province, leaving no time or opportunity for settling accounts. Mr. Bell, however, collected and arranged his papers as well as the circumstances would permit, overtook the retreating army at St. John's, and delivered over his accounts to General Hazen, who engaged to see them speedily adjusted and settled with the United States government, and the avails transmitted. This circumstance is of considerable importance in the further history of this case, and its claim to attention and favor is distinctly stated by General Hazen, with the particular circumstances of the manner of his adjusting and bestowing them for safe keeping.

A British force now took possession of Fort Chambly, and re-established the authority of the crown in that region, and Mr. Bell, as is alleged, and as might be well expected from his recent conduct, was immediately arrested for high treason, and thrown into prison, and after a long confinement escaped with his life, through the intercession of some Scottish friends, during a temporary relaxation of rigor, while Sir Guy Carlton was absent in England, and that on condition of his keeping himself in obscurity. As soon as peace was established between the two governments, and Mr. Bell was released from these embarrassments, he renewed his exertions to obtain compensation for his claims, and sent a power of attorney to General Hazen, with full powers to represent him, and close his accounts with the United States; but, before anything was effected, General Hazen was seized with the dumb palsy, as is a well known fact, and continued for some years unable to either write or speak. Finding his affairs in this situation, in 1794 Mr. Bell came from Canada to Philadelphia, to attend to his claim in person with the government. But now he found his claim barred by the statute of limitations; and though it seemed to be admitted that his account had been previously presented at the proper office, and during the suspension of the act of limitation, yet it was decided that the suspension could not be applied to him, as he was not an inhabitant of the United States. Mr. Bell then applied to Congress for redress; and though the committee to whom it was referred reported that, from the particular situation of the claim, and

its high merits, the statute of limitations ought to be waived with regard to it, the session passed off, and Mr. Bell was obliged to return home disappointed, discouraged, and poor, and unable afterwards to attend on Congress. He, however, appointed one Peter Mills his agent to prosecute his claim, who, it seems by the files, frequently presented it to Congress, and in 1802 a very favorable report was made on it to the House of Representatives, by Mr. Gallatin, then Secretary of the Treasury, to whom it had been referred; but this report, after suggesting the reasons for believing that Mr. Bell had used, perhaps, all the means in his power for an early settlement of his claim, referred the expediency of opening the statute of limitations back on Congress again. In 1810 his claim appears again to be before Congress, and the claim again critically examined, and its merits earnestly urged; but still the statute of limitations resisted every attack and every appeal. In 1814 Mr. Bell died in poverty, broken down with age, disappointment and misfortune. His children, learning that the absolute dominion of the statute of limitations had been shaken, have taken courage, and again presented this claim.

From a careful consideration of these facts, the committee feel warranted in coming, in this stage of the investigation, to these general conclusions. In the first place, that, in the language of Mr. Gallatin, in the report referred to, Mr. Bell "did, in the years 1775 and 1776, render services and furnish supplies to an indefinite extent and amount, to the continental army in Canada, and that it is probable that he has never received any compensation." And, in the second place, that the claims ought not to be prejudiced by this long lapse of time, "on account of," in the further language of Mr. Gallatin's report, "the precipitate retreat of the American army from Canada; of the petitioner's being a resident in that province; and of his having used, perhaps, the best means in his power, under those circumstances, to have his accounts settled at an early period."

Having come to these general conclusions, the committee will proceed to examine the items of the account and their vouchers more particularly. These several accounts, as before stated, extending during the whole time the American army had possession of Fort Chambly, are in separate bills, made up from one date to another, mostly under separate heads, according to the nature of the accounts, whether materials, advances or supplies; having also reference to the several officers who successively or occasionally had the command or direction of the plan or subject-matter. They exhibit, also, the several items, with the date of delivery, and generally the person to whom delivered; and in the case of the advances to the artificers, the days of service, the separate prices of each, together with the particular kind and plan of employment in which they were severally engaged; in short, they exhibit every appearance of being from the original entries at the time, and the bills now exhibited appear, from various memorandums on them, and references to them in reports made, to be the claims as originally presented. Some of the more prominent items are certified by officers knowing to their delivery. General Hazen, Major Butterfield, Captain Hamtramck and others, specify many of the articles Mr. Bell was in the habit of furnishing, and bear testimony to his readiness, at all times, to furnish whatever was in his power; and each account is duly sworn to by Mr. Bell himself. This, it must be presumed, is the amount of testimony his case was susceptible of; for it will be recollected that General Montgomery was slain in a few weeks after he left Fort Chambly; General

Thomas died in the spring, not long after he arrived in Canada; General Wooster received his mortal wound early the next spring, and General Arnold was soon in a situation not to be consulted on such subjects; and it might be added, if necessary, that a number of officers, Major Butterfield and others, who had been on duty in that region, were prisoners to the British Colonel McLeon, for some time near the close of the campaign. General Thompson and Colonel Irwin were also made prisoners about the same time. By a resolution of Congress, the revolutionary officers in the southern department, or a portion of them, were permitted to substantiate their claims by their own oaths, from the necessity of the case, it being utterly impossible to procure regular vouchers to all their transactions in such a confused state of warfare as prevailed at many times in many places. Mr. Bell was also an officer in whom the government or its officers had placed special confidence, and was situated amidst similar, and in many respects greater difficulties. There seems to be no reason, therefore, why he should not receive similar privileges. In the case of the heirs of Francis Cazeau, settled as late as 1817, the precedent is much stronger in Mr. Bell's favor, being almost a parallel case in all parts. Mr. Cazeau was not a known officer, to be sure, but one in whom the government placed special confidence, as the testimony in his case shows; his was then a single case like this. He resided in Canada, and had furnished supplies a part of the same time with Mr. Bell, for a portion of the army further down the St. Lawrence.

In the progress of this claim, the oath of Mr. Cazeau was directed to be received in support of it by a special resolve of Congress.

The committee have taken into consideration some objections that might arise in view of this claim.

It might be inquired, in the first place, why these supplies were so little connected with the proper contracting officers' accounts, and were not furnished through them. It appears, by the correspondence on file, and the style of the accounts seem to imply it, that a particular discretion was allowed to Mr. Bell, and confided to him; and that, for certain reasons, probably on account of the state of things there,—for the same appears in Mr. Cazeau's case,—he was treated as somewhat independent of ordinary directions, as it appears that orders and directions were often given to him to be communicated, or not, as he might see fit, to the commanding officers at the fort. It may also be noticed here that it appears, incidentally, from papers on file, that he had other transactions with the quartermaster, and that certain articles, which are proved by Mr. Bell's certificates to have been delivered to the garrison, are not charged in his present account, because they were to be accounted for by the quartermasters with whom he had in these cases contracted.

Again, it may be inquired whether it is possible or probable that the charges in question have remained unpaid. The facts just stated relieve the difficulty, in some measure, by showing that not all the supplies which Mr. Bell furnished at the time were charged or claimed in this account. And, as a more general consideration, it may be remembered that the testimony clearly shows that these accounts were delivered to General Hazen, at St. John's, at the time these services and supplies unexpectedly closed—an officer probably who knew as much about the account, and the state of things as they existed, as any other; and that they have been claimed and

insisted on at short intervals ever since ; and what is more conclusive, were critically examined, as the papers show, at Philadelphia in 1794, when the returns of the army, and the accounts of the disbursing officers, were then in existence, and any advances by them to Mr. Bell would have appeared as a part of these claims. Yet no one account, certificate, report, or examination, of which so many have been made in this case, under the scrutinizing feeling of those times, including the scrutinizing eye of office of Mr. Gallatin, has cast the least shade of suspicion or doubt on the genuineness and correctness of these accounts as presented, except in one item, and that the committee are not disposed to allow, not for any doubt of the accuracy of the charge itself, but on account of the settled practice of the government. This charge is for loss sustained on continental money paid him by the officers and others on their private accounts. The committee, therefore, under all the circumstances of this case, conclude that both justice and precedent, the pledge of General Washington, and the faith of the government, require that this case should now be settled at the proper offices where such claims are usually examined and settled.

The committee therefore report a bill in conformity with the principles expressed in this report.

Rep.—2

IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1852.

Ordered to be printed.

Mr. WALKER made the following

REPORT:

[To accompany bill S. No. 318.]

The Committee on Revolutionary Claims, to whom was referred the petition of John Moore White, son and heir of John White, make the following report:

In the petition of John Moore White for bounty land, and for seven years' half pay, under the resolutions of Congress of 1776, 1778, and of 24th August, 1780, the following statement of facts appears:

That he is the only surviving child of Major John White, who was on the 4th of October, 1777, acting as one of the aids of Major General John Sullivan, and in the battle of Germantown, whilst he was attempting to set fire to Chew's house with a view of dislodging the British, received a mortal wound by a shot, of which he died in a few days; that the said White, prior to the revolutionary war, was settled in Philadelphia as a merchant; that about 1765 or 1766, he married a Miss Moore, of Cumberland county, N. J., who died about 1770; that at the time of the said Major White's death he had no wife, but left three children, viz: Alexander, William, and the petitioner; and that Alexander and William have both since died, unmarried and without issue, leaving the petitioner, John Moore White, the only surviving child and heir of said Major White.

To sustain the facts as set forth by the petitioner, reference is made to the letter of General Sullivan, published in the Washington Letters, by Sparks, page 466; to Thatcher's Military Journal, page 143; to General Wilkinson's Memoirs, vol. 1, page 363; to Watson's Annals of Philadelphia; and to the testimony of Ephraim Miller and W. B. Ewing.

Ephraim Miller, a judge of the court of common pleas, was born in the county of Cumberland, New Jersey, as early as the winter of 1779-'80; recollects John Moore White, then of the county of Cumberland, now Woodbury; that the said White then lived with Col. Alexander Moore, his grandfather, whose wife was sister to witness's mother; that witness and John Moore White, and his two brothers, Alexander and William, were school-boys at the same school and at different schools; that his acquaintance with John Moore White has continued ever since, having now resided in the same town (Woodbury) upwards of forty years. Witness has frequently seen said White at his grandfather's, and always understood in the family of Mr. Moore, as well as in his father's family, that John Moore White was the

youngest son of Major John White and Sarah, the daughter of Alexander Moore, of Moore Hall, in the county of Cumberland, and that Major White was killed during the revolutionary war. Witness never knew or understood that Major White ever had or left any other than the three sons above mentioned, and that Alexander and William, brothers of said John Moore White, both of whom he knew, are represented to have died many years ago, unmarried and without issue.

William B. Ewing has often seen the tomb of petitioner's mother for forty years; the inscription thereon is in these words: "In memory of Mrs. Sarah White, wife of John White, merchant, of Philadelphia, and daughter of Alexander Moore and Sarah, who died October 15, 1770, in the 23d year of her age." Witness knew both of petitioner's brothers, and himself, as the grandchildren of Alexander Moore, esq., of Moore Hall, now Bridgeton; saw petitioner for the first time at his grandfather's, when witness was eight or nine years of age; has known him ever since; has always understood that John White, petitioner's father, was an officer in the American army, and that he was killed at the battle of Germantown; that he has been assured more especially of this fact by David James, an old revolutionary soldier who was in the engagement at said Germantown, with Major White.

Robert G. Johnson (author of Johnson's History of West Jersey) is intimately acquainted with John Moore White, late one of the judges of the supreme court of New Jersey; they were school-boys together—were members of the same school in 1781 and part of 1782. Said White boarded army of the Revolution, and who was killed at the battle of Germantown, with his uncle, Doctor Isaac Harris. That said John Moore White was always reputed and believed to be the son of Major White, an officer in the

Witness further states, that he was well acquainted with Col. Archibald McAllister, who was a captain of artillery, and was engaged in the battle of Germantown. Said McAllister was well acquainted with Major White, father of John Moore White; that said Major White was one of General Sullivan's aids, that he received his death-wound from a shot fired by the enemy from Chew's house; that the death of no officer was more regretted than Major White's.

Elizabeth Barton certifies, that on the day previous to the battle of Germantown, saw at her mother's lodgings a Major White, of the American army, apparently in good health; and after the battle I saw him again at my mother's lodgings, and he was said then to be mortally wounded, and she understood, subsequently, that he died a few weeks after the battle, in consequence of his wound; that she has known the present John Moore White for upwards of forty years, and that she has always understood that he was the son of the above mentioned Major White.

A copy from the family record, by J. C. Smallwood, shows that "John Moore White, son of John and Sarah White, was born 27th of September, 1770," also, that "John White, merchant, of Philadelphia, was killed by the British at the battle of Germantown, October 4, 1777, nobly fighting for the liberties of his country."

Petitioner certifies that the book containing the above record was published in Scotland in 1754; that he obtained it from Mrs. Harris, whose husband was the son of Dr. Isaac Harris, one of the executors of Alexander Moore, his grandfather, that it was in the possession of said Alexander Moore in the winter of 1779-'80, and the entries therein made, which have

been copied and attested by Smallwood, were in said book at that time ; has not seen the book since 1786, until within the past year (1848;) and further remembers to have seen his father, Major White, at his grandfather Moore's, while he was attached to the army.

Hon. J. G. Hampton certifies, that he is well acquainted with John Moore White, late a judge of the supreme court of New Jersey ; also, with J. C. Smallwood, President of the State Senate ; with Dr. W. B. Ewing, lately president judge of the court of common pleas ; Robert G. Johnson, author of Johnson's History of West Jersey ; with Ephraim Miller, for a long time one of the judges of the court of common pleas ; with Thomas P. Carpenter, now and for several years past one of the judges of the supreme court of New Jersey ; with Enoch Milford, Thomas Sennichson, Michael C. Fisher and Henry Bradshaw, all of whom are persons of high respectability ; that he is not personally acquainted with Mrs. Elizabeth Barton, but has always understood her to be a very respectable lady of Philadelphia.

Peter Hagner, Third Auditor, writes to Hon. W. A. Newell, that upon examination of the revolutionary records of his office, no information of payments to the heirs of Major John White, of the revolutionary army, who fell at the battle of Germantown, can be found.

J. L. Edwards, Commissioner of Pensions, writes that there are no means in his office of ascertaining whether the heirs of Major John White ever received half-pay under the act of 24th August, 1780, or not.

Mary A. Armstrong states that her father, Rev. James F. Armstrong, was a chaplain in the war of the Revolution ; that he resided for many years at Trenton ; that John Moore White, of Woodbury, in the said State, was a frequent visitor at the house of deponent's father ; that she has heard her father speak of said John Moore White as the son of Major White who was engaged in the battle of Germantown, and has always supposed and believed that he was a son of Major White.

The petitioner asks Congress to allow him seven years' half-pay, provided by the act of 24th August, 1780, with the interest thereon.

The Committee on Revolutionary Claims of the House of Representatives, second session, thirtieth Congress, reported a bill allowing seven years' half-pay, with such interest thereon as would now be due if a certificate for said seven years' half-pay had been issued and subscribed under the principles of the funding act, and no payments made thereon. (See bill and report herewith ; also, for precedents in the allowance of interest, see the references in the accompanying papers marked 1 and 2.)

This claim comes clearly within the resolution of Congress of 24th August, 1780, which provides " That the resolution of the 15th of May, 1778, granting seven years' half-pay to all officers who shall continue in the army to the end of the war, be extended to the widows of those officers who *have died* or shall hereafter die in the service, to commence from the time of such officers' death and continue for the term of seven years ; or if there be no widow, or in case of her death or intermarriage, *the said half-pay be given to the orphan children of the officer dying, as aforesaid, if he shall have left any.*"

IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1852.

Ordered to be printed.

Mr. WALKER made the following

REPORT:

[To accompany bill S. No. 819.]

The petition of the heirs of William Jones, late of Massachusetts, sets forth that their father was a soldier in the war of the Revolution, and that he served under Colonel Crary and Colonel Topham, of the Rhode Island line, more than eighteen months; that he was a sergeant in said line, and that he was promoted to the rank of quartermaster; that he received no bounty, gratuity, or pension from the general government on account of said services; that he was entitled to a pension under the act of 18th March, 1818, and that his name was inscribed on the pension roll of Massachusetts, under that act, at the rate of \$96 per annum, to commence on the 16th of August, 1819; that, before any payment was made to him on account of said pension, his pension was suspended—for what cause, is not known to the petitioners; that his name was never reinstated, and that no payment whatever was ever made to him on account of said pension; and the petitioners now pray Congress to grant them such an amount of money as their father would have received had he been continued on the pension roll at the rate of \$96 per annum from 16th August, 1819, the time his pension should have commenced, until the 22d June, 1829, the day of his death.

In his declaration, Jones states that he enlisted as a sergeant in December, 1776, in Colonel Crary's regiment of the Rhode Island line, and served fifteen months; that, before leaving the army, he again enlisted in the same regiment and served as a sergeant for twelve months; and in March, 1779, he again enlisted for twelve months more. A part of this time he was under Colonel Topham, and was discharged in March, 1780.

This statement is clearly sustained by the testimony of William Wilkinson, a highly respectable citizen, who was himself in service with Jones, and is now in the receipt of a pension on account of said services.

No evidence going to show that Jones performed any service as a quartermaster has been adduced; nor did he set up a claim to service in that grade in his application for the benefit of the act of 18th March, 1818. The petitioners must, therefore, be mistaken in supposing that he held that rank in the army.

It does not appear from the papers of Jones, filed in the Pension Office, that he ever applied, under the act of 1st May, 1820, to be restored to the pension roll. Many who were justly entitled to a continuance of their stipend refused to make the application; not being willing to admit that they were in indigent circumstances and needed assistance from the government.

Neither widows nor children have any claims to the benefits of the act of 18th March, 1818. That law provided for those only who were in actual service in the continental line for a continuous period of not less than nine months ; nor is there any law now in force which covers this case ; but, in consequence of the meritorious services of their father, Congress may grant the prayer of the petitioners.

IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1852.

Ordered to be printed.

Mr. WALKER made the following

REPORT:

[To accompany bill S. No. 320.]

The Committee on Revolutionary Claims, to whom was referred the petition of the children and heirs of Uriah Jones, report:

The petitioners represent that they are the children and legal representatives of Uriah Jones, who, it appears, enlisted in the Rhode Island continental line, in the company of Captain Humphreys, attached to the regiment under the command of Colonel Angel, in March, 1777, for the war, and continued to serve therein faithfully until the 24th of September, 1782, when, in consequence of some misunderstanding with Captain Allen, who at that time commanded the company, he with several others left the army, and returned to their homes; that their father was in actual service for nearly six years; that he was engaged in several battles, amongst which were Springfield, Red Bank, and Yorktown; that he had been several times wounded, and at the time of his death had two balls in him; that for many years prior to his death, the said Jones was infirm and destitute of property, and received his entire support from your petitioners; that their father never received either gratuity, bounty, or a pension from the general government, on account of his services in said war; that he made application to the Commissioner of Pensions to be placed upon the pension roll, under the act of June 7, 1832; but his name appears upon the Rhode Island roll as having *deserted*, in consequence of which his claim was rejected. They ask that Congress may grant such pay for their father's services, as would have been received by him had he been placed on the pension roll under the act of June 7, 1832, at the rate of \$80 per annum from 4th March, 1831, to December, 1845, the date of his death.

The act of June 7, 1832, grants to all who served as privates in the war of the Revolution two years or more, who were living at the passage of said act, a pension at the rate of \$80 per annum for life, commencing on 4th March, 1831. It is clearly shown that said Jones, the petitioner, further served nearly six years, and did not leave the service until the war was in fact over; that his having left the army at the time he did, when there was no further use for his services, was not such a desertion, if desertion it can be called, as to be considered a forfeiture of his rights and of the gratitude of his country. The petitioners are poor—two of them maiden ladies, who are entirely dependent upon their own exertions and the assistance of their brother for support.

Uriah Jones, in his declaration for a pension, states that he first served under Captain Stephen Olney, of Colonel Olney's regiment; that in 1777 he enlisted in the Rhode Island continental line, and served under various captains for more than five years; that in the battle at Springfield he was twice wounded, and received an honorable discharge.

At a subsequent date, Jones states that after serving four or five months under Colonel Olney, he enlisted in the continental line for during the war; that he served faithfully until one year after the capture of Cornwallis at Yorktown; that he was in that battle, and was once with Captain Stephen Olney, who stormed the fort; that he was in the battle at Springfield and at Red Bank; that he faithfully performed his duty and was willing to sacrifice his life for his country; "but, towards the close of the war, indeed after all fighting had ceased and peace had actually been made, one Captain Allen took the command of our company. The company did not like him, for we thought he was very arbitrary and unjust, and as many as eight or ten left the company at the same time; that he had no idea of deserting, nor was he ever tried for desertion."

Captain Stephen Olney states that he was a commissioned officer in Colonel Olney's and Colonel Angel's regiments, in the revolutionary war, in the Rhode Island line, from January, 1777, to March, 1782; that he well remembers Uriah Jones, who was in his company a part of said time; that said Jones served in said company about a year or more, while we were all under the command of the Marquis La Fayette, and that said Jones was a faithful soldier.

The certificate of Milton Burrows, and many other citizens of Cumberland, shows that Jones was a soldier of the Revolution; that he had always sustained a good character for truth and veracity; that they had always heard that said Jones was a brave soldier in the war of the Revolution, and that they do not believe that it was his intention to desert.

Joseph Bennett is 83 years old; knew Uriah Jones; lived in the town of Cumberland with him immediately after the war; that shortly after the battle of Yorktown, came, as it was understood, from the army; that he was engaged in the army, the whole or nearly the whole war; that the said Jones was a good and faithful citizen, and attached to the government; witness knew him from the time he settled in Cumberland until his death, in 1845.

Timothy Bennett, of Providence, was acquainted with Uriah Jones for twenty-five or thirty years previous to his death; that he had no property; that for several years before his death, his children supported him entirely.

Elijah Smith, of Smithfield, has been acquainted with Uriah Jones; that he enlisted in the army of the Revolution, and served several years, as he understood; was acquainted with him all his lifetime, and knew him to be a good and loyal citizen, and a firm friend to the government of his country.

Letter from J. L. Edwards, Commissioner of Pensions, shows that Uriah Jones enlisted in March, 1777, in the Rhode Island line, for the war, and deserted on 24th September, 1782.

IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1852.

Ordered to be printed.

Mr. MALLORY made the following

R E P O R T :

[To accompany bill S. No. 321.]

The Committee on Naval Affairs, to which was referred the memorial of Z. F. Johnston, a commander in the United States navy, praying to be reimbursed the amount of his personal expenses incurred at San Francisco, California; and also, to be paid the difference of pay between the pay of a commander and that of a post captain in the navy, have had the same under consideration, and reports :

That Commander Johnston, then at Norfolk, Virginia, was, on the 10th April, 1848, ordered by the Secretary of the Navy to proceed to the Pacific ocean, and report to Commodore Thomas Ap C. Jones, for duty in the squadron under his command. In compliance with this order, Commander Johnston reached San Francisco on the 20th November, 1848, and reported for duty a few days thereafter. Commodore Jones declined to assign him to duty, but detained him awaiting orders. His reasons for so doing are contained in his letter of 27th January, 1852, addressed to Commander Johnston, which has been laid before the committee. They are stated as follows :

"The reason why you were not placed in command on your joining the Pacific squadron, was that there was no ship on the station without a commander at that time. My reasons for not permitting you to return home immediately, were two-fold; first, I wished to keep in reserve a reliable commander to meet any emergency that might happen in the squadron; and, secondly, by your remaining on shore you occupied a position for apprehending deserters from the squadron, and consequently of lessening desertion, by rendering escape more difficult. I may also add, that before the arrival of the first of the steam-sloops, your return home would have been attended with great delay and expense to the government, little if any short of what was necessary to maintain you on shore at San Francisco until an emergency did arise which placed you in an appropriate command."

Commander Johnston was thus detained, at heavy charges, on shore, awaiting orders, under expenses far exceeding his pay. In refusing to allow these expenses, Mr. Dayton, Fourth Auditor of the Treasury, remarks as follows :

"At the same time I have no hesitation in saying, that if I had possessed the necessary discretion, I would have admitted the claim, inasmuch as the expense was incurred under very extraordinary circumstances, in the discharge of your duty, and could not have been avoided. It is certainly very hard that you should have been required to expend the whole of your pay, and much more, for your personal subsistence, in consequence of your detention in a country where the means of living were exorbitantly high, after having proceeded there under the orders of the department, and with the reasonable expectation of receiving the command of a vessel immediately upon your arrival, but which was not furnished you."

The committee is of opinion that the prayer of the petitioner ought to be granted to the extent of reimbursing his expenses incurred as aforesaid, and reports a bill accordingly.

The committee has fully examined the question presented by so much of the memorial as asks for the difference between the pay of a commander and that of a post captain in the navy, and reports that the prayer ought not to be granted.

IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1852.
Ordered to be printed.

Mr. GWIN made the following

R E P O R T:

The Committee on Naval Affairs, to whom was referred the petition of William Davis, asking remuneration for loss of property while in the naval service of the United States, by the abandonment of the United States ship-of-war Adams during the late war with Great Britain, have had the same under consideration, and report :

That no satisfactory evidence has been furnished by the petitioner to substantiate his claim ; the committee therefore ask to be discharged from the further consideration of the subject.

IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1852.
Ordered to be printed.

Mr. GWIN made the following

REPORT:

The Committee on Naval Affairs, to whom was referred the petition of Lydia Ann Mills, widow of a boatswain in the naval service, praying a pension, have had the same under consideration, and report :

That John Mills, the late husband of the petitioner, was a boatswain in the navy of the United States, and served in that capacity for several years, and that he died while on furlough, at Sag Harbor, in March, 1851. There is no evidence to show that his death was occasioned by disease contracted in the line of his duty. The petitioner represents that she is left with a number of children, without the pecuniary means for their support, and prays to be placed on the pension-roll, "in consideration of her husband's faithful service." The committee, although sympathizing with the condition of the petitioner, see no reason to extend the provisions of existing laws granting naval pensions, in her favor, and are therefore constrained to report adversely to the petition, and ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

MARCH 29, 1852.

Ordered to be printed.

Mr. MASON made the following

REPORT:

[To accompany bill S. No. 322.]

The Committee on Foreign Relations, to whom was referred the petition of Catharine Crosby, as one of the heirs of Thomas D. Anderson, late consul of the United States at Tripoli, have had the same under consideration, and respectfully report :

It is alleged in the petition, that said Anderson, whilst in the discharge of his duties as consul, contracted a disease in the eyes, by which he was deprived of vision, and in consequence thereof was unable to procure and preserve the vouchers for the contingent expenditures of his consulate, during the last five or six years that he remained in office ; and that, from the want of the usual and proper vouchers, no credit was given him for such expenditures by the proper accounting officers of the treasury, from the 31st December, in the year 1821, to the 27th August, 1827.

From the report of the Fifth Auditor, under date of the 24th November, 1847, which accompanies the papers, it appears that a claim was preferred at the treasury, by the representatives of Mr. Anderson, for an average allowance, on account of such expenditures, during the period referred to ; which on being referred to the Secretary of State, (Mr. Livingston,) he advised the Auditor, by letter of 21st June, 1832, that " the President directs that the representatives of Mr. Anderson must have recourse to Congress for the allowance of that part of the contingent account unsupported by vouchers."

The committee, for further information, again referred the subject to the Secretary of State, with a view to ascertain up to what period, during the consulate of Mr. Anderson, an allowance for contingent expenses had been made ; and, also, what had been the average annual allowance for such expenditures, made to the predecessors and successors of Mr. Anderson in the said consulate ; and they subjoin the report of the Fifth Auditor, dated 16th March, 1852, rendered to the committee on such reference.

Memorandum of allowances which have been made at the Treasury for the contingent expenses of the United States consuls at Tripoli, from 23d July, 1812, to 30th September, 1833, and the annual average sum to each, viz :

To Richard B. Jones, consul, from 23d July, 1812, to 24th June, 1820; nearly 8 years.....	\$5,952 43
Average per annum.....	744 05
To Thomas D. Anderson, consul, from 17th August, 1819, to the 31st December, 1821; 2 years, 4 months, and 17 days	2,793 00
Average per annum.....	1,197 00
To Charles D. Coxe, consul, from 1st January, 1822, to 23d September, 1830; 3 years and nearly 9 months	2,800 00
Average per annum.....	746 66
To Charles J. Coxe and Ebenczer J. Ridgeway, who acted as consuls after the death of Charles D. Coxe, until the arrival of Daniel S. McCawley, from 1st October, 1830, to 29th May, 1832; 1 year and nearly 8 months: \$79 50 and \$415	494 50
Average per annum.....	296 70
To Daniel S. McCawley, consul, from 1st July, 1832, to 30th September, 1833; 1 year and 3 months.....	740 00
Average per annum.....	592 00

TREASURY DEPARTMENT.

Fifth Auditor's Office, March 16, 1852.

It appears, from this report, that no such allowance was made to Mr. Anderson, after the 31st December, 1821; that, for the two years and four months he was in office, up to the 31st December, 1821, the average annual allowance to him, for such expenses, was \$1,197 per annum; but that the allowance to his predecessor and immediate successor averaged about \$745 per annum.

The committee have adopted the last average as that which would seem most likely to be just to the government, and not inequitable to the claimant; and they recommend such allowance for five years, from the 31st December, 1821, to the 31st December, 1826, at which time, as appears from the last-named report of the Auditor, an account commenced with Mr. Anderson's successor; and they report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

MARCH 29, 1852.

Ordered to be printed.

Mr. MASON made the following

REPORT:

[To accompany bill S. No. 323.]

The Committee on Foreign Relations, to whom was referred the resolution of the Senate, instructing them "to inquire into the propriety and justice of providing by law, pursuant to the recommendation of former Presidents of the United States, and last by President Polk, in his message of the 7th December, 1847, for the payment of the claim there mentioned as arising to certain Spanish subjects, in the case of the Schooner 'Amistad,'" have had the same under consideration, and submit the following report:

It appears that, on the 26th of August, 1839, the Spanish schooner called the "Amistad" was taken possession of by Captain Gedney, an officer of the navy of the United States, then in command of one of our public vessels. The "Amistad" was found at anchor on the coast off Long Island, New York, about three-fourths of a mile from the shore. This seizure was made at the request of two Spanish subjects, named, respectively, Ruiz and Montez, residents of the island of Cuba, then on board the vessel; and she, with her entire cargo, was carried, with all on board, into the port of New London, in Connecticut.

In the course of judicial proceedings which were there instituted before the district court of the United States, and which commenced in a claim for salvage on the part of the officer making the seizure, the following facts were elicited: That the "Amistad" was a Spanish coasting vessel, owned by her captain, a Spanish subject and resident of Cuba; that, on the 27th June, 1839, she cleared, in due and regular form, at the port of Havana, in that island, for Puerto Principe, in the same island. There were then on board, besides the captain and owner, a slave named "Antonio," the property of the master, and the two passengers, subjects of Spain, residing in Cuba, named Ruiz and Montez. The cargo, in addition to various merchandise, owned in part by said Ruiz and Montez, and in part by merchants in Cuba, consisted of fifty-three negroes, certified, in passports signed by the Captain General of Cuba, to be slaves, the property of said Ruiz and Montez. That, on the voyage, these negroes revolted, killed the captain and cook, severely wounded one of said passengers, and succeeded in taking possession of the vessel. That two of the sailors were sent adrift in a boat belonging to the schooner; and the negroes compelled the said Ruiz

and Montez to navigate the vessel, directing them to steer for the coast of Africa. That the vessel continued at sea, in possession of the negroes, (the passengers availing themselves of all opportunity to direct her course towards the coast of the United States,) until land was made, where, being short of provisions and water, they anchored, as above stated, for the purpose of procuring those supplies. When discovered, a party of the negroes were on shore. These were captured by the naval officer and returned to the vessel, when the whole were taken by him, as stated above, into New London. The judicial proceedings terminated in a decree for salvage, under which the vessel and cargo, the negroes excepted, were sold. The fifty-three negroes were declared to be free, and were never restored to those claiming them. The boy "Antonio," claimed as the property of the murdered captain by the Spanish consul, and admitted as such throughout, was detained in custody during these proceedings, and then secreted and sent away to New York—by whom, it does not appear. But the consul made diligent search for him in that city, but never recovered him. And to crown the whole, the two gentlemen on board the vessel, Ruiz and Montez, were imprisoned for months, on various pretexts, pending the judicial trials, and then suffered to depart, stripped of all the valuable property they had with them on board the vessel when seized by an officer of this government.

Pending the judicial proceedings, the district attorney of the United States filed a suggestion before the district court, setting forth that a claim for the said vessel and cargo had been made to the government of the United States by the Spanish minister at Washington, claiming that the same was the property of Spanish subjects, and should be restored to them, as required by treaty between the two governments.

The vice-consul of Spain for the State of Connecticut filed a libel, claiming the boy Antonio as the property of the deceased master of the vessel. And the negroes, (with the exception of Antonio,) in answer to the claim for salvage, denied that they were slaves—alleging that they were natives of Africa, then recently brought to Havana in violation of the laws of Spain prohibiting the slave trade, and under which laws they were free.

It appears that, immediately after this capture—that is to say, in September, 1839—the minister of Spain accredited to this government made a formal demand of the Secretary of State for the restoration of the vessel and cargo entire, under the treaty, which was followed in October by a further demand from the successor of that minister for the release of Ruiz and Montez, then imprisoned in the common jail at New York. (See Ex. Doc. No. 185, 1st session 26th Congress.)

In February, 1842, this claim was made the subject of a special message to the House of Representatives by President Tyler, communicating a further correspondence between the minister of Spain and the Secretary of State during the year 1841, in which the demand was strenuously urged on this government. (See Ex. Doc., H. R., No. 191, 3d session 27th Congress.)

In January, 1844, President Tyler communicated to the House of Representatives a further correspondence with the Spanish minister, reiterating and pressing his former demand. (See Ex. Doc., H. R., No. 83, 1st session 28th Congress.)

President Polk again brought the subject before Congress as recited in

the resolution of the Senate, strongly recommending that the claim should be paid; and from the correspondence communicated by the Secretary of State at the last session, under a call from the Senate, it appears that this claim continues to be strenuously urged on the part of Spain before the Executive in terms of the strongest and most just remonstrance. The foregoing narrative is given to show that Spain has been in nowise remiss in urging this demand—making it, in the opinion of the committee, the more incumbent on Congress to pass finally on the subject.

The courts of the country having taken cognizance of, and made a final disposition of the subject, so far as the jurisdiction assumed by them is concerned, it remains only to be determined whether the United States are under treaty obligation, nevertheless, to indemnify these claimants.

For the due and proper observance of treaty stipulations, nations look only to the contracting power—that is to say, to the government. If the treaty with Spain required that this vessel and cargo should have been delivered up to the Spanish claimants, the obligation so to do rested upon this government, so far as Spain was concerned. And it is no answer to Spain, neither can the government exonerate itself towards her, or in the eyes of other nations, by saying that the judiciary of the country assumed jurisdiction of the subject, and thus withdrew it from the control of the government which made the treaty, and which became responsible for its observance.

By the constitution of the United States the judiciary is constituted an independent department of the government, and its jurisdiction clearly defined; and it nowhere appears that in controversies between the United States and foreign nations arising under treaties between the respective powers, the determinations of the judiciary are to bind the contracting parties. The judiciary is a passive department: it acts only through prescribed forms, and when its authority is invoked by parties designated in the constitution, for causes stated in the constitution: its judgments are binding only upon parties to the cause, and the privies of such parties. This is the universal law of the judiciary, and furnishes in itself a full answer to any objection that the decision of the judiciary is the law of the treaty, on questions arising between the contracting parties. Neither Spain nor the United States were parties, or could have been made parties (*se invito*) to the controversy before the courts, arising out of the seizure of the *Amistad*. It is a wise and sound rule of the judiciary, in expounding a treaty in a cause, and between parties properly before it, to adopt such construction, if any, as may have been given to it by the legislative and executive departments—those departments which represent the government in its relations with foreign nations—and this subordination would seem due, to preserve the harmony of such relations. But it has never been considered that the converse is true—that the executive and legislative departments, in conducting the intercourse or adjusting the relations of the government with foreign states under existing treaties, acts in subordination to the decisions of the judiciary. It is no answer to Spain, therefore, to say that this subject has been determined by the judiciary of the country adversely to this claim of Spain; and it becomes necessary, in consequence, for the executive and legislative departments of the government, in replying to the demand of Spain, to construe the treaty originally, and to decide the obligations that may arise under it. The eighth, ninth, and tenth articles of this treaty are as follows:

"ART. 8. In case the subjects and inhabitants of either party, with their shipping, whether public and of war, or private and of merchants, be forced, through stress of weather, pursuit of pirates or enemies, or any other urgent necessity for seeking of shelter and harbor, to retreat and enter into any of the rivers, bays, roads, or ports, belonging to the other party, they shall be received *and treated with all humanity, and enjoy all favor, protection, and help*; and they shall be permitted to refresh and provide themselves, at reasonable rates, with victuals and all things needful for the subsistence of their persons, or reparation of their ships, and prosecution of their voyage; and *they shall noways be hindered from returning out of the said ports or roads, but may remove and depart when and whither they please, without any let or hindrance.*

"ART. 9. All ships and merchandise, of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either State, and shall be delivered to the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof.

"ART. 10. When any vessel of either party shall be wrecked, foundered, or otherwise damaged, on the coasts or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and, if the operations of repair should require that the whole or any part of the cargo be unladen, they shall pay no duties, charges, or fees, on the part which they shall relade and carry away."

In view of the true intent and spirit of these articles in the treaty, construed together, it might well be taken that the case would come within the true and fair meaning of the eighth; for here it is very clear that the Spanish schooner, under the guidance of Ruiz and Montez, Spanish subjects, and under a most "urgent necessity," did seek "shelter and harbor" on the coast of the United States, and within its maritime jurisdiction, though, from duress, they were unable actually to enter any "bay, river, road, or port."

But it is the ninth article, in the consideration of the committee, on which this claim properly rests: because, in their judgment, this vessel and cargo, being "rescued out of the hands of pirates and robbers on the high seas," and carried into a port of the United States, should have been there, pursuant to the terms of the treaty, "delivered into the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor, as soon as due and sufficient proof should be made concerning the property thereof."

The committee understand that "a ship or vessel on the high seas, in time of peace, engaged in a lawful voyage, is, according to the laws of nations, under the exclusive jurisdiction of the State to which her flag belongs, as much so as if constituting a part of its own domain;" and that, according to the same laws, the ship's papers, exemplified in proper form according to the laws of the nation to which she belongs, are held as, between independent nations, conclusive of the character of her voyage and of her cargo.

Upon the question how far each government is bound to give full faith

and credit to the public official acts of other governments, performed in due course of law by such governments, and certified under the forms pertaining to such governments, and upon the consequences that would ensue by refusing such faith and credit, the committee can add nothing to the views contained in the opinion of the Attorney General of the United States on the "Amistad case," dated in October, 1839, and communicated to Congress, with other documents, by President Van Buren, in his message of the 15th April, 1840, (see Executive document No. 185, H. R. 1st session 26th Congress,) from which is the following extract :

Extract from the opinion of the Attorney General.

"In the intercourse and transactions between nations, it has been found indispensable that due faith and credit should be given by each to the official acts of the public functionaries of others. Hence the sentences of prize courts under the laws of nations, or admiralty, and exchequer, or other revenue courts, under the municipal law, are considered as conclusive as to the proprietary interest in, and title to, the thing in question; nor can the same be examined into in the judicial tribunals of another country. Nor is this confined to judicial proceedings. The acts of other officers of a foreign nation, in the discharge of their ordinary duties, are entitled to the like respect. And the principle seems to be universally admitted, that, whenever power or jurisdiction is delegated to any public officer or tribunal, and its exercise is confided to his or their discretion, the acts done in the exercise of that discretion, and within the authority conferred, are binding as to the subject-matter; and this is true whether the officer or tribunal be legislative, executive, judicial, or special. (Wheaton's Elements of International Law, page 121; 6 Peters, page 729.)

"Were this otherwise, all confidence and comity would cease to exist among nations, and that code of international law which now contributes so much to the peace, prosperity, and harmony of the world would no longer regulate and control the conduct of nations. Besides, in this case, were the government of the United States to permit itself to go behind the papers of the schooner Amistad, it would place itself in the embarrassing condition of judging upon the Spanish laws, their force, effect, and their application to the case under consideration.

"This embarrassment and inconvenience ought not to be incurred. Nor is it believed a foreign nation would look with composure upon such a proceeding, where the interests of its own subjects or citizens were deeply concerned. In addition to this, the United States would necessarily place itself in the position of judging and deciding upon the meaning and effect of a treaty between Spain and Great Britain, to which the United States is not a party. It is true, by the treaty between Great Britain and Spain, the slave trade is prohibited to the subjects of each; but the parties to this treaty or agreement are the proper judges of any infraction of it, and they have created special tribunals to decide questions arising under the treaty: nor does it belong to any other nation to adjudicate upon it, or to enforce it. As, then, this vessel cleared out from one Spanish port to another Spanish port, with papers regularly authenticated by the proper officers at Havana, evidencing that these negroes were slaves, and that the destination of the vessel was to another Spanish port, I cannot see any legal principle upon which the government of the United States would be authorized to go into an investigation for the purpose of ascertaining whether the facts stated in those papers by the Spanish officers are true or not."

With the same executive document, No. 185, are communicated copies of this vessel's papers, all of which are admitted to be regular and complete, and exemplified in proper form. Among them are manifests or passports signed by the Captain General of Cuba, attesting that these negroes were slaves, and were the property of said Ruiz and Montez, respectively, with a license to transport them from Havana (the port whence the vessel sailed) to Puerto Principe, in the same island of Cuba.

The committee hold that in questions between this government and Spain, arising under the treaty, these documents are conclusive upon the United States, both as to the condition of the subject—that is to say, the slavery of the negroes—and as to the property of the claimants. On being remanded to the jurisdiction of Spain, as contemplated and provided for by the treaty, any inquiries into the validity of the evidence they imported may

have been proper for her tribunals on questions either as to the slavery of the negroes or the rights of property of the claimants *inter se*.

But again : were it competent to the United States to look into evidence to contradict these documents certifying the condition of these negroes, the committee concur entirely in the opinion of the same Attorney General, that the United States could not rightfully undertake to decide questions arising under treaty stipulations made between Spain and other nations, to which this government is no party. The institution of slavery exists in the island of Cuba, a Spanish dependence, and is protected there by the laws of Spain. It appears that in the year 1819, Spain contracted by treaty with England to abolish and prohibit the African slave trade within her dominions, and it is alleged that these negroes were imported into Cuba subsequent to that treaty. If this be so, it may follow that if done with the connivance of Spain, it is in violation of that treaty ; or if by her subjects, without authority, that, by proceedings in the proper tribunals constituted by that treaty, the negroes would have been declared free, and the offenders punished ; or if either, that England would have had cause of complaint against Spain, and have been entitled to redress. But in no aspect can it be admitted that the United States could undertake to decide upon the effect and operation of treaties between foreign powers exclusively, not affecting the rights of citizens of the United States.

Upon the whole, the case, as fully shown by the documents above referred to, is nakedly this :

A Spanish vessel and cargo, owned by subjects of Spain, is found on the high seas, near the coast of the United States, in possession of lawless negroes, who had obtained such possession by murder and rapine.

Two of the passengers in the vessel, also subjects of Spain, who are the principal owners of the cargo, and the only survivors of the white men who set out on the voyage, were found on board, held in duress and in imminent peril of their lives by the negroes ; and at their urgent solicitation, for the safety of their lives and property, the vessel and cargo were seized by a public vessel of the United States and brought into a port of the United States.

The vessel was on a lawful voyage, under the flag of Spain, and with regular and complete sea-papers.

On these facts, the committee unhesitatingly pronounce that, independent of positive treaty stipulations, decent courtesy or the ordinary hospitality of civilized countries would have required, in the language of the eighth article of the treaty with Spain, that these helpless foreigners, thus cast upon our shores, should have been "treated with all humanity, and have enjoyed all favor, protection, and help." But if not so, the terms of the ninth article of the treaty are too clear to admit of doubt, and, in the opinion of the committee, the case of the *Amistad* and cargo comes fully within it.

It was incumbent on the United States, on the arrival of the *Amistad* at the port of New London, to have seen that she was "delivered to the custody of the officers of that port ;" that by them she was "taken care of ;" and, finally, that the vessel and cargo were "restored *entire* to the true proprietor"—such being the plain language of the treaty.

That such was the obligation of the treaty, the government of the United States was fully advised by the Attorney General, in the opinion cited above ; and the committee add, as appearing from the correspondence com-

municated with document No. 185, before referred to, that President Van Buren, in whose administration the case occurred, had caused one of our public vessels to await, off the port of New London, the decision of the district court of the United States while the case was depending, with orders, upon the release of the negroes from custody of the court, to receive them on board, and to convey them to Havana, there to be restored to the authorities of Spain.

As to the slave "Antonio," there is no justification for the failure to restore him, except that he was in some mysterious manner lost or stolen after the trial was over, and thus the government was unable to comply with its treaty obligation as to him.

In estimating the allowance that should be made for the whole claim, the committee find that the actual value of the property at Havana, when there shipped, with the reasonable expenses of said Ruiz and Montez while detained in this country in their effort to reclaim it, with interest thereon, will exceed the sum of fifty thousand dollars; and they report a bill for payment of that sum accordingly.

IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1852.

Ordered to be printed.

Mr. FISH made the following

REPORT:

[To accompany bill S. No. 327.]

The Committee on Naval Affairs, to whom was referred the petition of petty officers and seamen on board the United States steamer Missouri at the time of her destruction by fire, praying remuneration for clothing lost by that catastrophe, have had the same under consideration, and report :

That the attention of Congress was called to the subject of the losses sustained by these meritorious men, by the President, in his annual message of the 5th December, 1843, in reporting the loss of the ship, as follows:

"It gives me great pain to announce to you the loss of the steamship Missouri by fire, in the Bay of Gibraltar, where she had stopped to renew her supplies of coal, on her voyage to Alexandria, with Mr. Cushing, the American minister to China, on board. There is ground for high commendation of the officers and men, for the coolness and intrepidity and perfect submission to discipline evinced under the most trying circumstances. Surrounded by a raging fire which the utmost exertions could not subdue, and which threatened momentarily the explosion of her well-supplied magazines, the officers exhibited no signs of fear and the men obeyed every order with alacrity. Nor was she abandoned until the last gleam of hope of saving her had expired. It is well worthy of your consideration, whether the losses sustained by the officers and crew in this unfortunate affair should not be reimbursed to them."

The Secretary of the Navy, in his annual report of the same period, also refers in commendation of the coolness and intrepidity of the entire crew on the occasion, which is shown to have been exhibited in a remarkable degree, by the letters of Captain Newton, Lieutenants Bissell and Blunt, and Purser Price, before the committee, each of whom testifies to the entire loss of every article by the crew, except only the clothes on their backs, and many saving even these so burnt as to leave them almost naked; saving their lives only by throwing themselves into the water.

The committee, therefore, in view of these facts, unanimously report the accompanying bill to reimburse these brave men for their losses, consequent upon the abandonment of their own effects in their heroic devotion to duty and the public interests, in the unparalleled efforts made by them to save their ship from destruction.

IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1852.

Ordered to be printed.

Mr. DAWSON made the following

R E P O R T :

[To accompany bill S. No. 261.]

The Committee on Patents and the Patent Office, to whom was referred the petition of Cyrus H. McCormick, for the extension of letters patent, granted to him on the 21st day of June, 1834, for improvement in the machine for reaping all kinds of small grain; and also the letters patent granted the said Cyrus H. McCormick, dated the 31st day of January, 1845, for a new and useful improvement in reaping machines, ask leave to report :

That by the originals presented to the committee, and now on file, it appears that three patents have been granted to the petitioner for improvements in reaping machines—the first dated January twenty-first, one thousand eight hundred and thirty-four; the second dated January thirty-first, one thousand eight hundred and forty-five; and the third dated October twenty-third, one thousand eight hundred and forty-seven.

That on the 19th day of January, 1848, he made due application to the board of extension, under the provisions of the eighteenth section of the act approved July 4th, 1836, for the extension of his first patent.

That said board, on the 23d day of March, 1848, ordered that the petitioner go into proof of priority of invention, as between him and Obed Hussey, esq., who, about the same time, had appeared before the Commissioner of Patents for the purpose of filing an application for the extension of a patent for a reaping machine, granted to him on the 31st day of December, 1833; and who, it appears, did not file his application for the same in time to give the sixty days' notice required by law, and who, therefore, was compelled to abandon such application, and thereupon appeared before the board in opposition to the extension of the patent of the said Cyrus H. McCormick.

That such order of the board was based upon the fact that the patent of the said Hussey bore date previous to the date of the petitioner's first patent, and thus, *prima facie*, said Hussey appeared to be the first inventor.

That testimony was thereupon taken, in compliance with the order of the board; and by the proof submitted on the part of said McCormick, it appeared conclusively that he invented his machine, and first practically and publicly tested its operation, in the harvest of 1831. That no proof on the part of the said Hussey appears to have been submitted to the said

board, as to the date of his said invention; but from the exhibits referred to your committee, it appears that his machine was first constructed and operated in 1833. (See exhibit 17.)

That on the 29th day of March, 1848, the said board decided against the extension of the petitioner's patent; reasons for such action on the part of the said board being set forth in exhibit marked D, being a letter of the Hon. Edmund Burke, late Commissioner of Patents, to Senators Douglas and Shields, under date of 4th March, 1850, viz :

"GENTLEMEN: Your letter of March 1st inst. has been duly received; and in reply to the inquiries which it contains, I have the honor to state the grounds on which the board for the extension of patents under the 18th section of the act of July 4, 1836, re-organizing the Patent Office, declared to extend the patents of Obed Hussey and Cyrus H. McCormick, for reaping machines; they are as follows:

"1st. In relation to the patent of Hussey, if my memory serves me, his patent expired some time within the latter part of December, 1847. During that month, and within some ten or twelve days before the expiration of his patent, he applied to me, as Commissioner of Patents, for an extension. I informed him that inasmuch as the act of Congress prescribed the mode in which patents should be extended; required a reasonable notice to be given to the public in sundry newspapers, published in those parts of the country most interested against such extension; and as the board had decided that 'reasonable' notice should be a publication of the application for extension three weeks prior to the day appointed for the hearing, there was not time to give the required notice in his case; and I advised Mr. Hussey not to make his application, and thus lose the fee of 40 dollars required in such cases—as he inevitably would, without the least prospect of succeeding in his application—but to petition Congress for an extension, which body had the power to grant it. This is all which I, as Commissioner of Patents had to do with Mr. Hussey's application.

"2d. As to the case of Mr. McCormick, during the same winter (of 1847-48,) and after Mr. Hussey had applied to me for the extension of his patent, Mr. McCormick made application in due form, and in season, for the extension of his patent, which was granted in June, 1848, and consequently expired in June, 1848. Due notice was given; and on the day appointed for a hearing, Mr. Hussey appeared, to contest the extension of McCormick's patent. And on examination of the records of the Patent Office, and a comparison of the two patents, it appeared they both covered one or more features substantially identical in principle, but not the same precise combinations. And inasmuch as Mr. Hussey's patent bore date before McCormick's, the board decided that he was *prima facie* the inventor of the feature, or rather claim, which conflicted. But Mr. McCormick contended that he invented the part of the machine embraced in both patents, one or two years before Hussey obtained his patent, and was, in fact, the first and original inventor; and he prayed for a continuance of the hearing until he could take testimony upon that point to sustain his right.

"His request was granted, and he was ordered to take testimony, with due notice to Mr. Hussey.

"He complied with the orders of the board; but on an examination of the testimony on the next day of hearing, it was found to have been informally taken, and therefore ruled out.

"Mr. McCormick subsequently made efforts to supply the defects, but never did satisfactorily to the board, and they declined extending his patent. Such is a brief history of the proceedings before the board of extension on McCormick's application.

"I will now give my views with regard to the merits of the invention itself. I do not hesitate to say that it is one of very great merit. In agriculture, it is in my view as important, as a labor-saving device, as the spinning-jenny and power-loom in manufactures. It is one of those great and valuable inventions which commence a new era in the progress of improvement, and whose beneficial influence is felt in all coming time; and, I do not hesitate to say, that the man whose genius produces a machine of so much value, should make a large fortune out of it. It is not possible for him to obtain during the whole existence of the term of his patent, a tenth part of the value of the labor saved to the community by it in a single year. Therefore I was in favor of its extension.

"There were, however, other reasons which induced me to favor its extension. One was the fact that the machine was one which could be used only a few weeks in each year. Therefore, for want of an opportunity to test it, its perfection must be a work of time and tediousness. It is not like the steam-engine and other machines in common use, upon which improvements may be at any time tested. Therefore the invention and perfection of a reaping machine must be a work of slow progress. And such was the case with McCormick's machine. He was many years experimenting upon it before he succeeded in making a machine that would operate, as the testimony before the board (although informal) clearly proved. In the next place it is a machine which was difficult to introduce into public use.

It was imperfect in its operation at first. It had to encounter the prejudices and the doubts and fears of agriculturists. And it appeared in proof, that Mr. McCormick was not able to sell but very few machines, until two or three years before the expiration of his first patent, which covered the leading original principles of his invention. Under that patent he never received any thing like an adequate compensation for the really great invention which he had produced. And I now repeat, what I have always said, that his patent should be extended. With regard to the conflicts of rights and interest between him and Mr. Hussey, it is proper for me to remark, that when both of these patents were granted, the Patent Office made no examination upon the points of originality and priority of invention, but granted all patents applied for, as a matter of course. Therefore, it is no certain evidence that, because an alleged inventor procured a patent before his rival, he was the first and original inventor. It, in fact, was a circumstance of very little weight in its bearing upon the question of priority between the parties. Besides, the testimony of Mr. McCormick presented to the board of extension clearly proved that he invented and put in operation his machine in 1831, two years before the date of Hussey's patent.

"But my opinion is, that justice will be best subserved by extending the patents of both parties. Their claims are not in all respects identical; but both include features and combinations which would entitle either of them to a patent, if he were to strike out of his patent all that the other claimed. Besides, if these patents were extended, they could then settle their respective rights in a court of law, if they should so elect.

"I again repeat that, in my judgment, McCormick's patent should be extended. That was my opinion when the matter was before the board of extension, and it has never changed.

"McCormick has two other patents for improvements upon his machine, the last of which expires in 1861. They all relate to the same machine, and there would be great propriety in extending his first and second patents to the date of the expiration of his third and last one. This would, in fact, consolidate the invention and secure his just rights. Mr. Hussey's patent could be extended to the same date, and thus the rights of both would be secured. They are both meritorious inventors, and have produced machines of great value, but for which they have not been able to secure an adequate remuneration because their machines are adapted to use only for a very small portion of the season.

"I have the honor to be, respectfully, your obedient servant,

"EDMUND BURKE.

"HON. STEPHEN A. DOUGLAS, { *United States Senate.*"

"HON. JAMES SHIELDS,

That upon the denial of the extension by the board, the petitioner made his application to Congress on the 10th day of April, 1848, being about *two months previous to the expiration of his patent.*

Besides the patent granted June 21st, 1834, to Mr. McCormick, and which expired June 21st, 1848, he procured, January 31st, 1845, a *second* patent for an improvement in his said machine, which patent will expire January 31st, 1859. On the 23d October, 1847, he obtained a *third* patent for further improvements in said machine, which last patent will expire on the 23d day of October, 1861. (Vide patents, documents A, B, and C.) Of the utility and value of his invention, the proof submitted, it is presumed, will be regarded as ample. From a large mass of testimonials touching this point, it is deemed necessary only to refer to the following:

Award of the Michigan State Agricultural Society, for best reaper, a silver medal and ten dollars. December, 1851.

Award of the Mechanics' Institute, Chicago, Illinois, gold medal. October, 1851.

Award of the Franklin Institute, Philadelphia, Pennsylvania, first premium. 1851.

Award of the Pennsylvania State Agricultural Society, first premium and ten dollars. January, 1852.

Award of the State Agricultural Society of Wisconsin, first premium 1851.

Award of the New York State Agricultural Society, gold medal. January, 1852.

Award of the World's Fair, London, "Council Medal." 1851.

Mr. Pusey, M. P., one of the committee on trial of this reaper for the council medal, at the great Industrial Exhibition, states, in the journal of the Royal Agricultural Society, that it is "the most important addition of farming machinery that has ever been invented, since the threshing machine took the place of the flail." In the final report of Mr. Pusey, who was chairman of the committee on agricultural implements, to the Royal Commission, he also says:

"As to the practical working of the reaper, two horses drew it at the trial very easily round the outside of the crop, until they finished in the centre, showing that they could cut easily fifteen acres in ten hours. One man drives sitting, and another stands on the machine to rake. It is hard work for him, and the men ought sometimes to change places.

"The straw left behind at the trial was cut very regularly, lower than by reaping, but higher than by bagging. The inventor stated that he had a machine which would cut it two inches lower. This is the point, I should say, to attend to, especially for autumn cleaning.

"Though it seems superfluous to bring this machine to the test of economy, we may estimate the present cost of cutting fifteen acres of wheat, at an average of 9s. per acre, to be £6 15s. Deduct for horses and men 10s. 3d., and for binding 2s. 6d. per acre, and the account will stand thus:

"Average cost of reaping 15 acres at 9s.....	£6 15 0
"Horses and men for reaper.....	£0 10 0
"Binding crops 2s. 6d. per acre.....	1 17 6
	<hr/>
	2 7 6
"Saving per acre 5s. 10d.....	£4 7 6

"The saving in wages, however, would of course be an imperfect test of the reaper's merits, since in bad seasons and late districts it may often enable the farmer to save the crop."

In reference to a subsequent trial, Mr. Pusey remarks:

"Mr. McCormick's in this trial worked—as it has since worked at Cirencester (Agricultural) College and elsewhere—to the admiration of practical farmers, and therefore received a council medal."

Notwithstanding so important a revolution in husbandry as this machine effected, and its manifest utility, still its introduction into use appears to have been surrounded with difficulties. The inventor was obliged to offer full guarantees for its satisfactory performance to the farmer, in every instance of sale, thereby assuming the entire risk. (Vide terms of sale, marked 16.)

The perfecting of the invention, in its practical details, seems to have required patient study, critical observation, and persevering trials. In 1834 its main features were patented; defects were found to exist, and the result of one experiment for the remedy could only be ascertained during one harvest.

It was found that the cutting features could not be relied upon in all cases, until further improvements were made, as described and patented in January, 1845. From June 21st, 1834, (date of the first patent,) and for ten years after the invention in 1831, and until the improvements were made as secured by the patent of 1845, he appears to have derived little or no profit from his reaper, but spent much time, money, and labor in improving it, so as to make it profitable to himself and available to the public. Upon its introduction to the heavy wheat of the prairies, other important improvements were found necessary, in order to safely introduce it. They were accordingly made, and embraced in the *third* patent, granted October 23d, 1847.

From the statement before the board of extension, and submitted to your committee in 1848, it appears that,

In 1841 he sold 2 machines.

In 1842 " 7 "

In 1843 " 29 "

In 1844 " 50 "

In 1845 " 50 "

In 1846 " 190 "

In 1847 " 450 "

Making-----778 machines in the whole. On the machines he received an average of \$20 each for his patent right, making \$15,560 on the sales of his machines, and on sales of territory about \$7,083; making in the whole \$22,643. His expenses he is unable to give in detail, but estimates his time and labor, advertisements, hire of agents, &c., at "several thousand" dollars. (Vide document U.)

This report might perhaps properly stop here, but for remonstrances received against the extension prayed for, on the ground that the inventor is supposed to have realized a large profit from the machine. How far these opinions may be correct, does not appear to your committee. Profits made by the manufacture and sale of the machines, *since the expiration* of the patent of 1834, cannot have been derived from that patent. Besides, in proportion to the number of machines sold, have advantages resulted to the public from this invention, and to a much greater extent than to the inventor; and it would seem that, having done something for himself, while doing much for the country, his claims to the extension of the first patent, under which he failed to realize adequate remuneration, in accordance with the provisions of the law, should not be less than if he had done nothing for either.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1852.
Ordered to be printed.

Mr. GEYER made the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Dr. Orris Crosby, praying an increase of pension, report :

That by an act of Congress, approved the 8th day of August, 1846, the petitioner was placed upon the roll of invalid pensioners, at the rate of eight dollars per month during his life, the pension to commence on the 1st day of January, 1846. The petitioner alleges, that "this act, by some mistake, gave him but the pension of a common soldier, whereas he was entitled to the pension of a surgeon's mate;" and prays that the mistake may be rectified, and such pension be granted as his discharge shows him entitled to—meaning the half-pay of a surgeon's mate.

It appears from the statement of the petitioner, that he was arrested by the authorities in Canada, where he was then a student of medicine, and placed on board the British fleet on Lake Erie, in June, 1813. While on board of Commodore Barclay's flag-ship, he was severely wounded by a shot from the first lieutenant, for refusing to fight against his own country. It appears by other evidence, that he afterwards served as a volunteer surgeon's mate in the service of the United States, and was honorably discharged on the 22d September, 1814; and he afterwards obtained for his services a warrant for six hundred and forty acres of bounty land.

The facts in the case were fully before Congress at the time the act for the relief of the petitioner was passed. He was not in the service of the United States at the time he received his wound—a case not provided for by law, but depending upon the discretion of Congress. That the petitioner afterwards served as a surgeon's mate did not determine the amount of pension, if any were granted. The case, though one of merit, was necessarily submitted to the judgment of Congress to grant a pension or not, and to determine the amount according to the circumstances of the case. The committee, therefore, cannot, upon the facts of the case before them, find that any mistake was committed in fixing the amount of the pension. They have not before them any evidence of the circumstances under which the wound was inflicted, or of its nature or effect, except the statement of the petitioner; and do not find in that sufficient to justify an increase of the pension allowed by the act of 1846. They therefore recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1852.

Ordered to be printed.

Mr. GEYER made the following

R E P O R T :

The Committee on Pensions, to whom was referred the memorial of "the legal representatives of Major L. P. Montgomery, deceased," report :

That Lemuel P. Montgomery was appointed, on the 29th of July, 1813, a major in the thirty-ninth regiment of infantry; one of the regiments authorized to be raised by the act of the 29th January, 1813. He was killed at the battle of the Horse Shoe, on the 27th of March, 1814. The law provided, in such cases, that if the deceased leave a widow, or if no widow, a child or children under sixteen years of age, such widow, or if no widow, such child or children shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years; and in case of the death or intermarriage of such widow before the expiration of said term of five years, the half-pay for the remainder of the time shall go to the child or children of such deceased officer; "provided always, that such half-pay shall cease on the decease of such child or children."

The memorial represents that Major Montgomery had no wife nor children; and prays "that such sum as comports with honor and justice, and gratitude of the country, may be awarded to the legal representatives of the late Major L. P. Montgomery." It does not appear who are those representatives, nor are facts established which would authorize the grant of the prayer of the memorial. The law contemplates a provision only for those immediately dependent upon the deceased officer, and the committee are not disposed to extend the provision to distant relatives, nor make an exception from the general rule, unless it was shown very clearly that the applicant was deprived of his support by the death of the deceased officer, and incapable of supporting himself. The committee therefore recommend the adoption of the following resolution :

Resolved, That the prayer of the memorialist ought not to be granted.

IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1852.
Ordered to be printed.

Mr. HUNTER made the following

R E P O R T :

The Committee on Public Buildings respectfully submit this report, as a response to the inquiries which they were directed to make, by the following resolutions referred to them by order of the Senate :

Resolved, That the Committee on Public Buildings of the Senate be instructed to make a thorough examination of the work thus far executed on the extension of the Capitol.

"1. As to the uniformity of the strata upon which the walls rest.

"2. As to the quality and dimensions of the stone, and quality of the mortar used.

"3. As to the character of the work, the mode of its construction, and its power of resistance.

"4. As to every other matter and thing connected therewith as may, in their opinion, affect the stability and permanency of the whole structure.

"And the committee are hereby empowered to bring to their aid, in the foregoing examination, such of the United States topographical engineers, and other competent persons, as they may think proper."

To obtain the best information upon this subject which was within their reach, this committee addressed letters to General Totten of the engineer corps, and to Colonel Abert of the topographical engineers, requesting them each to detail two competent officers, for the purpose of making such an examination as was contemplated by the Senate. General Totten detailed Captain Frederick A. Smith and Brevet Lieutenant Colonel Mason, both of the engineers, and Colonel Abert detailed Lieutenant Colonel James Kearney and Captain Thomas J. Lee, of the topographical engineers. A copy of the resolution of the Senate was placed in the hands of the engineers of each corps, with a request that they would examine the work carefully, and report the result to the Committee on Public Buildings. The investigation, as your committee believe, was made with great care by these officers; and the results were reported separately by the engineers of the two corps, both of which reports are herewith submitted; the one from the engineers marked A; and the other, from the topographical engineers, marked B. These reports leave no doubt on the mind of the committee as to the sufficiency of the foundations, and the general good character of the work. The addition of hydraulic cement to the mortar is a matter which had already attracted the attention of the architect, who has taken measures to provide for it. After a consideration of the whole subject, your committee see no cause for a further suspension of the work, but many reasons for its imme-

diate prosecution. The favorable season for such work has already commenced; and a number of workmen who were engaged on the building as long as the appropriation lasted, are still here, without employment. If the work is to go on, it should be re-commenced at once, not only to secure as much as possible of the working season, but to save the expense and prevent the suffering which would arise from the dispersion of the workmen now here, and the collection of others, or perhaps of these themselves, from distant cities.

A.

WASHINGTON, March 25, 1852.

SIR: On the subject of the resolution of the Senate of the 16th instant, relating to the foundations of the extension of the Capitol, referred by you to us on the 22d, with a request for an opinion, we have the honor to state that, after an examination sufficiently minute to satisfy our minds, we have come to the following conclusions on the different points presented.

"1. As to the uniformity of the strata upon which the walls rest."

Excavations were made under our direction at the four corners of the new work; that is, at the northeast and northwest corners of the north wing, and the southeast and southwest corners of the south wing. These excavations extended from six to ten feet below the bottom of the foundations, except at the latter point, where it went only to the actual level of the bottom of the foundation. The ground on which the foundations were laid was thus examined, as well as the underlying stratum, at three points, and we are enabled to express a confident opinion that the stratum of gravel, several feet thick, (overlying a stratum of hard sand) on which the foundations rest throughout, is of a uniform incompressibility, and that there is no reason to apprehend a settlement of the walls from its giving way.

"2. As to the quality and the dimensions of the stone, and quality of the mortar used."

The quality of the stone (gneiss—commonly called blue-rock) is excellent—probably no better could be obtained for foundations. As a general rule, the stones are of decidedly large dimensions. In some few places, the small stones generally used, in construction, to fill up, occur in larger quantities than we would consider desirable, but nowhere to excite our apprehension as to the stability of the structure.

The mortar used for the bedding or lower part of the foundation, resting directly on the ground, is throughout of hydraulic cement and sand—as it should be. In some other parts a mixture of cement and lime with the sand was used, in good proportions. In other portions, say about one-half of the whole above the bedding, no hydraulic cement was used in the mortar. This we consider an error, as pure lime-mortar of the common fat limes, without cement, will never set in the interior of thick walls.

The best illustration of the truth of this will be found on inspection of the specimens of mortar submitted herewith to the committee. Specimen A was taken from the foundations of the northwest corner of the main building of the present Capitol; taken from about a foot inside the face of the wall. It was laid nearly fifty years ago, and is now soft and without cohesive power. Specimen B was taken from the foundations of the southern

wall of the main building of the Capitol. It was laid some seven or eight years ago, in making repairs. This mortar is similar in character to the first. Specimen C was found on certain stones, cut out, some years ago, of the cellar walls under the rotundo, where the furnaces were put in. This specimen is much drier than the others, owing to its exposure to the dry and hot air of the furnace-rooms; but it will be perceived that it is nearly as destitute of cohesive power as the other.

It is by no means to be understood, however, that the stability of a wall is to be considered as dependent upon the use of cement. The introduction of cement into general use, has been of quite recent date in this country; and in many large and substantial structures not a particle has been employed.

"3. As to the character of the work, the mode of its construction, and its power of resistance."

The character of the work and the mode of construction we consider excellent, with the exceptions alluded to; and in no part do we perceive deficiencies to warrant, in us, an apprehension as to the power of these foundations to resist the pressure of the superstructure.

It may be proper, under this head, to notice a feature of the construction, proposed by the accomplished architect in charge. Immediately upon the foundation walls, as now existing, he proposes to lay two courses of masonry—making a depth of four feet—composed of the largest sized blocks, carefully laid in cement-mortar, without lime; this to equalize the pressure of the superstructure over the whole thickness of the wall; an excellent arrangement, which seems to us to promise full security against any anticipated danger.

4th interrogatory. Under this general head we have perceived nothing calling for further remark.

We respectfully, therefore, submit it as our opinion, that the existing foundations are sufficient for their purpose.

Respectfully submitted.

FRED. A. SMITH,
Captain Engineers.

J. L. MASON,
Captain Engineers, Brevet Lieutenant Colonel.

HON. R. M. T. HUNTER,
Chairman of the Committee on Public Buildings, U. S. Senate.

B.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
Washington, March 30, 1852.

SIR: At the request of the Committee on Public Buildings, of the Senate, we have made a careful examination of the foundations for the extension of the Capitol, and we have the honor to report: That we find the masonry rests uniformly upon the original gravel and clay of the hill; the foundations being sunk to various depths below the present surface, in order to attain this. The foundation descends by steps slightly inclining towards the hill, and the breadth of the walls increases as they descend below the

surface. The depth of this gravel and clay we did not deem it necessary to ascertain with precision, as it is known to be considerable.

The stone employed in the foundations is granitic, and of an excellent and durable quality. The lower courses, for some four feet of height, are laid in a cement of hydraulic lime and sand, which, at the points examined by us, has already attained a sufficient degree of hardness.

The masonry of the rest of the walls is of the same kind of stone, laid generally in mortar composed of fat lime, hydraulic lime, and sand. The body of the walls is of rubble work; the buttresses are coursed with a rubble backing. Proper attention seems to have been observed in selecting, for the points requiring the greatest resistance, stones of the largest manageable size, as, for example, at the angles, and wherever the masonry has been carried to the greatest depth; whilst upon the east fronts, and especially for walls intended to support colonnades only, stones of smaller dimensions have been used; showing a sufficient care in the selection and distribution of the materials.

A greater proportion of hydraulic lime might have been advantageously used in the upper portions of the masonry, especially in parts last built; but we think it probable that, as the season advances, this mortar will set favorably, except such parts of it as may have been injured by the frost. This is shown by the difference in hardness of that having a favorable exposure, and that laid in the early part of the winter.

Before the materials for the superstructure can be brought upon the ground and prepared for the work, sufficient time will have elapsed to show and to arrest the effects of the frost upon the mortar near the exterior part of the foundation. It would also be advisable that the walls be left exposed as long as practicable, before embanking against them.

The stone and mortar used in the masonry of the foundations of the Capitol are inferior to that of the extension, according to the comparison we were enabled to make during our late inspection, and also according to the recollection of one of the undersigned, who had numerous opportunities of examining the present building during its progress. At one point of the old wall examined, the mortar was found still soft. The sample taken, however, hardened in twenty-four hours after it had been exposed to the air.

In thus expressing our belief in the sufficiency of these foundations, we have reference, of course, only to their ability to support the structure which it is proposed to erect upon them.

In conclusion, we have to add, that we received from the architect every assistance, and all the information we desired, respecting the work. The condition in which the work was left at the close of the last season's operations, and that in which it still remains, is the best evidence of the honest intentions of all concerned in it.

Respectfully submitted:

JAMES KEARNEY,
Lieut. Col Topographical Engineer.
THOS. J. LEE,
Captain Topographical Engineers.

IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1852.

Ordered to be printed.

Mr. WALKER made the following

REPORT:

[To accompany bill S. No. 339.]

The Committee on Revolutionary Claims, to whom was referred the memorial of the heirs of Benjamin Mooers, praying for payment of depreciation on commutation certificates received under the resolution of 22d March, 1783, report:

That your committee have carefully examined the subject set forth by the memorialists and their prayer for relief, and find that the merits of the question are based upon services and incidents coeval with the Revolution.

The petitioners represent that their father, Benjamin Mooers, was a lieutenant and adjutant in Hazen's regiment, continental line, during the Revolution, and served in that capacity to the end of the war; and for such services became entitled to half-pay for life, under resolution of 21st October, 1780, which is as follows:

"Resolved, That the officers who shall continue in service to the end of the war shall be entitled to half-pay during life, to commence from the time of their reduction."

Which life annuity, at the offer of Congress, was agreed to be commuted for five years' full pay, under resolution of 22d March, 1783, as follows:

"Whereas the officers of the several lines under the immediate command of his Excellency General Washington, did, by their late memorial transmitted by their committee, represent to Congress that the half-pay granted by sundry resolutions was regarded in an unfavorable light by the citizens of some of the States, who would prefer a compensation for a *limited term* of years, *or by a sum in gross*, to an establishment for life; and did, on that account, solicit a commutation of their half-pay for an equivalent—in one of two modes, above mentioned—in order to remove all subject of dissatisfaction from the minds of their fellow-citizens; and whereas Congress are desirous, as well of gratifying the reasonable expectations of the officers of the army, as of removing all objections which may exist in any part of the United States to the principle of the half-pay establishment, for which the faith of the United States hath been pledged; persuaded that those objections can only arise from the nature of the *compensation*, not from any indisposition to *compensate* those whose services, sacrifices and sufferings have so just a title to the approbation and rewards of their country;

"Therefore resolved, That such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the

amount of five years' full pay in money, or securities on interest at six per cent. per annum, as Congress shall find most convenient, instead of the half-pay promised for life by the resolution of 21st October, 1780; the said securities to be such as shall be given to other creditors of the United States, provided it be at the option of the lines of the several States, *and not of officers individually* in those lines, to accept or refuse the same; and provided also, that their election shall be signified to Congress through the commander-in-chief, from the lines under his immediate command, within two months, and through the commanding officer of the southern army, from those under his command, within six months from the date of this resolution.

"That the same commutation shall extend to the corps not belonging to the lines of particular States, and who are entitled to half-pay for life as aforesaid; the acceptance or refusal to be determined by corps, and to be signified in the same manner and in the same time, as above mentioned.

"That all officers belonging to the hospital department, who are entitled to half-pay by the resolution of 17th day of January, 1781, may collectively agree to accept or refuse the aforesaid commutation, signifying the same through the commander-in-chief within six months from this time. That such officers as had retired at different periods, entitled to half-pay for life, may collectively, in each State of which they are inhabitants, accept or refuse the same; their acceptance or refusal to be signified by agents authorized for that purpose, within six months from this period. That with respect to such retiring officers, the commutation, if accepted by them, shall be in lieu of whatever may be *now due to them*. Since the time of their retiring from service, as well as what might hereafter *become due*, and that so soon as their acceptance shall be signified, the Superintendent of Finance be, and he is hereby directed to take measures for the settlement of their accounts accordingly, and to issue to them certificates bearing interest at six per cent.; that all officers entitled to half-pay for life, not included in the preceding resolution, may also collectively agree to accept or refuse the aforesaid commutation, signifying the same within six months from this time."

And that when such commutation was received it was paid to him in three certificates, bearing six per cent. interest, amounting, nominally, to sixteen hundred dollars, but worth, in fact, only two hundred; whereas he was entitled to receive, according to the letter and spirit of the resolution under which his claim had matured, the real sum of sixteen hundred dollars in cash; or, if paid in securities, they should have been based upon some reliable resource for their ultimate redemption, and been of par value.

The petitioners claim that these acts of the Continental Congress are public acts, pledging in this, as in every other case of assumed responsibility, the public faith, with competent contracting parties, who fulfilled, on their part, at the risk of their lives, and to the saving of the national existence.

The subject presented in this memorial has been frequently brought before Congress. The committee find that, as early as 1810, the recipients of these commutation certificates, then quite numerous, deeming themselves to have been wronged by the manner in which their assent to the proposition for commutation had been met by the government—in that it was paid by a rapidly depreciating medium, which fell on their hands to be worth no more than 10 to 12½ cents on the dollar—petitioned Congress for redress.

The committee to whom the subject was referred in the House of Rep-

representatives made a report on the 10th day of February, 1810; and, after citing the various resolutions of Congress promising half-pay and commutation, the report concludes as follows:

"The petitioners state, and the fact is of too general a notoriety to be disputed, that, although they confidently expected at the time they were compelled, from imperious necessity, to accept the same in gross, in lieu of half-pay for life, that it would be paid to them in reality, and not by a fresh promise, without any sufficient guarantee for its due performance; yet they were compelled to receive certificates, which, for the want of any specific provision for the payment of them, or the interest accruing on them, were immediately depreciated five for one, and, by degrees, to ten for one, in exchange for money.

"They therefore pray that half-pay for life, to commence at the time of the reduction of the army, may be granted to them, according to the solemn stipulations entered into with them by Congress, by the resolutions before referred to, deducting therefrom the five years' full pay received by them in depreciated paper, by way of commutation.

"It is well known to your committee, and to the whole nation, that a greater part of the officers were compelled, by hard necessity, to dispose of their commutation certificates at prices infinitely below their nominal amount.

"That this did not proceed from want of patriotism, of which they had before given proof most unequivocal, or of want of confidence in their government; but that, after having spent the vigor of their manhood in the service of their country, they returned to the walks of civil life, (many of them maimed and scarcely able to halt along,) ignorant of what was passing, or likely to pass, in the councils of the country.

"The gripping hand of poverty bore hard upon them, and, unacquainted as they necessarily were with civil affairs, they fell an easy prey to the wiles of the artful and insidious speculator, who was lying in wait to fatten upon their hard earnings. Under circumstances like these it would have been strange indeed if they had kept their certificates in their pockets. No; the thing was impracticable. Go they must, for whatever they would bring, and be the consequences whatever they might.

"Upon the whole, the committee are of opinion the contract entered into by Congress with the officers of the late revolutionary army, for giving them half-pay for life, has not been substantially complied with by our government.

"They therefore recommend the following resolution:

"*Resolved*, That the prayer of the petitioners is reasonable, and ought to be granted."

No bill passed at that session. The war of 1812 soon ensued, and the subject seems not to have been renewed until in 1818, when Mr. Johnson, from a select committee (H. R., 7th December, 1818,) to whom were referred sundry petitions in behalf of the surviving officers of the revolutionary army, made a report, from which we make the following extracts:

"The memorialists state a variety of facts, and present many considerations to prove that, by the commutation, great injustice has been done to the officers originally entitled to half-pay for life; and their object is to induce the government to resume the original contract of half-pay. * * Calculating the amount of the principal of the arrearages from the time of his reduction, and deducting therefrom five years' full pay, and the balance

of arrearages being thus ascertained, to issue a certificate bearing an interest of six per centum per annum to the officer for the amount of said balance, and the officer to be henceforth entitled to receive half-pay, in half-yearly payments, for and during his natural life.

"The committee have endeavored to investigate the subjects with all the candor and attention which its merits required; and in any view, difficulties of no ordinary magnitude presented themselves. * * * Upon the view taken by the memorialist, the committee could not see any justice in confining the prayer of the petitioner to those only who still survive.

"To provide for those upon the principle of justice and legal obligation, and suffer the dead to be forgotten, would be but a partial remuneration. The heirs of the deceased would have equal claims upon the government as the officer who survives.

"Again, the memorialist asks a resumption of the original contract, to which the same objection may be urged as in the year 1783. If then deemed objectionable, because not in accordance with the genius of our institutions, nor congenial with the sentiments of the American people, it may be equally so at this day.

"Upon the most extensive view which the committee have taken upon this subject, they have found difficulties still thickening, and to answer the prayer of the petitioner to its intent would, in the opinion of the committee, go to establish a principle fraught with much evil.

"Conscious, at the same time, of the merits and worth of these distinguished heroes, whose devotion and deeds have given such glory and such happiness to our country; conscious of their patriotism and valor, which have imposed such lasting obligations upon the grateful remembrance of the nation, the committee could not reconcile to their feelings or duty an entire rejection of the memorial, and they have looked for a combination of the principles of equity and gratitude on which might be rewarded, in some little degree, the labors and sufferings of the memorialist, without involving future difficulties in the establishment of a dangerous precedent.

"This principle has been found in the depreciation of the commutation certificates, and the losses sustained by the untimely sale of these certificates.

"It is a well-attested fact that most of those certificates were sold at an amount of not more than from one-fifth to one-tenth of their nominal value. Gold and silver not being in the power of the government, the pressing and immediate wants of the holders rendered it necessary for them to dispose of their certificates at any price; and upon this view of the subject, the committee recommend the following resolution:

"*Resolved*, That each officer of the revolutionary army, who was entitled to half-pay for life under the several resolves of Congress upon that subject, and afterwards, in commutation thereof, received the amount of five years' full-pay in certificates or securities of the United States, shall now be paid by the United States the nominal amount of such certificates or securities, without interest, deducting therefrom one-eighth part of said amount."

Succeeding that, in order, is the report, made by Mr. Sergeant, of the select committee (House of Representatives) to whom was referred, on the 10th December, 1819, the memorial of the officers of the revolutionary army, accompanying a bill for their relief. After stating the substance of

the memorial and the resolutions upon which they claim remuneration, the committee proceed to say:

“It is not necessary to remind the House either of the merit or the value of the services rendered by the memorialists to their country. History has already consecrated the one, and the other is sufficiently attested in a manner that must appeal to the best feelings of every citizen of the United States, by the rapid growth and eminently happy condition of that country for which they devoted the most valuable portion of their lives—for which they took up their swords, and for which, too, with no less patriotism, they laid them down, when her liberty and independence had been effectually secured. If, in behalf of this interesting remnant of the officers of the Revolution—of all that remains to us to cherish of the gallant and illustrious band who have done so much for us—an appeal were made to the national sense of gratitude, we presume respectfully to say, that it could scarcely be resisted. It would then be recollected, that these survivors are precisely the men who have made the greatest sacrifices for their country, as, from the time that has since elapsed, it will be seen that most of them must have spent in her service that very portion of life, when, according to the order of nature, the habits are formed, and the acquirements made, which, in a great measure, determine its future fortune and character: and that, while they were thus generously preparing for the nation an abundant harvest of political and social happiness, they gave up the only opportunity for themselves of becoming qualified for any occupation which, in time of peace, could assure to them the means even of a comfortable subsistence. If accidental good fortune, or distinguished capacity, or the good feelings of their fellow-citizens, displayed in selecting them for public offices of profit, have placed some of them above the reach of want, it is nevertheless believed that there are many who have little to console them in the decline of life, but the recollection of the share they have contributed in laying the foundation of their country’s independence. To all such, how welcome and how gladdening would be the substantial manifestation of that country’s gratitude! A provision for their few remaining years would alleviate the sufferings of age; and the veteran of the Revolution would feel continually, and be quickened and animated by the feeling, that the time he had devoted to the public service was not, to himself, altogether waste and unprofitable; that his exertions and his sufferings were not wholly overlooked; but, by a natural and honorable return, that country whose infancy he had aided by his sword to guard, now, in the day of her strength and her prosperity, extended her hand to soothe and support the weakness of his declining years.

“It is not, however, upon grounds like these that the memorialists rest their application. They claim upon the footing of right, maintaining, your committee respectfully submit, with great force, that what they ask for is due to them by contract. In the examination of this claim it appears to the committee, that towards men whose merits are so unquestionable, the government ought to be guided by principles of liberal justice, having regard to all the circumstances, giving them *all* their due weight; and even where there might be some doubt upon the application of the rules that govern between man and man, to incline in favor of the memorialists. With this explanation the committee beg leave to state, that they consider the resolve of the 21st October, 1780, as a contract between the government and the officers, voluntarily and freely entered into, at a time when both parties

were at liberty in regard to the subject of it; and stipulating, as the consideration on the part of the officers, their future services until the end of the war, whatever might be its duration. It is not to be questioned that the stipulated service was rendered, nor that it was eminently useful. But it deserves to be remembered, in connexion with all which subsequently occurred, that after the officer had rendered the service, he had no further reliance but upon the faith and ability of the government. This was his condition when the resolve of the 22d March, 1783, was adopted. The preliminaries of peace had been signed, the army was about to be disbanded, and he to be thrown into society, there to seek his livelihood by civil pursuits, for which the tenor of his preceding life was calculated only to disqualify him. Had he, under the pressure of circumstances so urgent, and growing out of his previous services, assented to the commutation, his country could scarcely deem it a voluntary assent, but rather a submission to an uncontrollable and instant necessity, which admitted of no deliberation or delay. But there is another reason why this assent ought not to be considered as binding. The contract of 1780 was with the individual officers, and it is not strictly reconcilable with justice that it should be varied, rescinded, or released, as to any one of them, without his own individual consent. The commutation, except as to certain retired officers, was offered, not to the individuals, but to lines and corps, thereby subjecting the individual, as to his own particular rights, to the decision of others, and with respect to the younger and inferior officers, exposing them to be governed by the overruling influence of superior rank and years, to which they were habitually accustomed to submit.

"The committee are aware, that it may be urged (and between individuals it might be decisively urged) that the subsequent acceptance of the commutation certificate, of itself, amounted to an assent. If the officer had been left free to make his choice, and having made it, the government had given him what he freely consented to receive, the argument would not have been without some force. But he was not so free. The resolve of Congress, an act of the government and a law, left him no choice except to abide by the decision of the lines and corps of the army, or wait, whatever might be his wants, till a more fortunate period should enable him to approach that body, not with a power to enforce his rights, but only to sue for it in the language of solicitation. It may be remarked, though somewhat out of order, that this is substantially the course which these memorialists are now pursuing. They have waited till their country is able to do them justice, and they now petition for their right, offering to relinquish all they have received.

"But it is also true, and furnishes an additional answer to the objection, that the government was not able to comply with the terms of the resolve of 1783. It could not pay in money, and it did not pay in what was equivalent to money. The commutation certificate was then, and for some time after, worth not more than one-eighth, perhaps even less, of its nominal value. When, at the distance of eight years afterwards, the funding system was established, it is notorious that, generally speaking, the certificates no longer remained in the hands of the officers. The restoration of the public credit came too late for men whose necessities were so imperious: and thus the half-pay for life, which had been solemnly stipulated, and most meritoriously earned, dwindled in the hands of the officers, without any fault of theirs, to scarcely more than half-pay for a single year.

“Under this view of the case, it seems to your committee just and reasonable, and becoming the faith of the nation, to execute the contract originally made, upon the terms proposed by the memorialists; that is to say, of deducting from the arrears of the half-pay, computed from the cessation of hostilities to the present time, the full nominal amount of the commutation certificate, and paying to the surviving officers the balance; and henceforward, during the remainder of their lives, paying to them the half-pay stipulated by the resolve of 1780. For the arrears the memorialists are willing to receive stock, bearing an interest.

“In order to define and limit, with as much precision as possible, the extent of the demand which will thus be created upon the treasury, your committee have thought it right to assume as a basis, the number of surviving officers, and the aggregate of claim, which are stated by the memorialists themselves; and they recommend, respectfully, that any provision which may be made be limited accordingly, so as not to exceed that sum.

“In conformity with these suggestions, the committee herewith report a bill.”

Next in order is the report made in the Senate, as follows :

JANUARY 3, 1826.

“The committee to whom were referred the memorials of the surviving officers of the army of the Revolution, report :

“That delegates, in behalf of the surviving officers of the army of the Revolution, from the respective States of Rhode Island, New York, New Jersey, Pennsylvania, and South Carolina, convened at the city of Philadelphia, and agreed to present a respectful memorial once more to Congress, in hopes of obtaining from the nation that reward for their services and sacrifices which, in their opinion, is due, and which has been withheld for a period that is long and unreasonable, and until they have become far advanced in their old age—the youngest among them being within a year or two of seventy.

The memorialists refer to the general depreciation of the currency in which they received their pay, the paper of which being ultimately redeemed at one hundred for one. The certificates, also, of the commutation of the half-pay for life, for five years' full-pay, owing to no provision being made for the payment of interest or principal, soon depreciated to eight for one; and, even when the arrears of interest were funded, the certificates bore an interest only of three per cent., absorbing thereby, at once, one-half their value: and the payment of one-third of the principal, besides, was deferred for ten years, without interest.

The memorialists, after referring to the acts of Congress containing the stipulations concerning their pay, delicately decline to suggest any mode for the settlement of their demands, but leave the whole matter to the liberality and justice of Congress—impressed, however, with the belief that the general sentiments of their fellow-citizens would gladly approve of a generous proceeding, on the part of the government, in favor of their stipulated reward.

In contrasting the darkness of the times in which the memorialists successfully fought the battles of their country, with its present secure and eminently happy condition, all must feel friendly disposed to give to the

claimants a patient hearing, and to be willing to decide on their case upon the fairest principles of equity.

The committee respectfully submit, in the first instance, whether the claims of the officers are not sustainable, on the footing of right, and due by the solemnity of a contract; and, with this design, they will, in this place, bring into view the resolutions of Congress on the subject.

By a resolve of Congress, of the 15th May, 1778, it is provided that all military officers who then were, or should thereafter be, in the service of the United States, and who should continue in the service during the war, and not hold any office of profit under the United States, or any of them, should, after the conclusion of the war, be entitled to receive, annually, for the term of seven years, if they should live so long, one-half of the then pay of such officers.

By a resolve of Congress, of the 11th of August, 1779, it was provided that the half-pay given by the aforesaid resolution of the 15th of May, 1778, should be extended to continue for life.

And by a resolution of the 21st of October, 1780, it was provided that the officers who should continue in service to the end of the war should be entitled to half-pay during life, to commence from the time of their reduction.

By virtue of these resolves, a solemn contract between the government and the officers was made; it originated and was consummated by the free and unbiassed will of the parties, without surprise or compulsion on either side. It has been most gallantly performed by the officers; and after a bloody conflict of eight years, and when the liberties and independence of their country were secured, following the example of the celebrated Roman, they returned with cheerfulness to their private citizenship.

It seems to the committee, that the performance of a contract on such an occasion, and especially one which has produced such boundless consequences, ought to be observed on the part of the government with the most profound sanctity; and that nothing but the free expression of the will of both parties, unaffected by necessitous circumstances, ought to be allowed to abrogate or rescind it. But, as it appears to the committee, it is manifest that the resolve of the 22d of March, 1783, which commuted the half-pay for life, for five years' full-pay, grew out of the impoverished state of the treasury: for, had the finances of the country been in a good condition, it is inconceivable that Congress would have proposed a change so disadvantageous to the officers; to whom the country, independent of the discharge of its contract with them, owed such a large debt of gratitude. And, on the other hand, it cannot be believed that the officers would have given any assent to the commutation, either by lines or corps, or individually, if the most urgent necessity had not deprived them of any other alternative.

The acceptance, too, by lines and corps, deprived many individual officers of the right of choice, and placed the young and aged on terms disproportionate with the original stipulation.

The subsequent acceptance of the commutation certificates ought not to be considered as altogether impairing the rights of the officers, as they were then entirely in the power of the government, and could do nothing which presented better prospects for themselves. The whole transactions, as it appears to the committee, were of a similar character; and were indisputably governed by the inability of the government, and the immediate wants of the officers; and, as severe as the departure from the original

contract must have appeared to the officers at the time, they did not then foresee the extent of their misfortunes : for, as no fund was pledged for the payment of the principal or interest of the commutation certificates, instead of receiving good money in punctual payments as expected, the credit of the country became so low, that nothing of the interest was paid, and the certificates rapidly decreased in value, while the necessities of the officers continued to increase. They had suddenly been transferred from the habits of war to civil society, and could not successfully engage all at once in the ordinary pursuits of life ; and it is as notorious as it was unavoidable, that most of the officers were compelled to part with their certificates at the lowest stage of depreciation of eight for one ; and, in this manner, without incurring any blame on themselves, the half-pay for life was reduced to a little more than half-pay for a single year. From hence, it plainly appears that the consideration to be performed on the part of the government failed in a certain degree, and totally deprived the officers of the chance of deriving any benefit from the future credit of the country.

The reward for life arose from the natural effusion of justice which the times indicated ; but, in consequence of these unhappy occurrences, it has disappeared, and nothing has been preserved for the officers to enjoy but a consciousness of their own merits, and the consequent unexampled prosperity of their country.

The performance of contracts, morally or politically speaking, is equally sacred ; and when the power of decision resides exclusively in the bosom of one of the parties, it should be exceedingly cautious that justice is done to the other. Let it be imagined that the claim of the officers of the army of the revolution could be submitted to the people, or to a court and jury possessing legal and equitable jurisdiction ; the committee verily believe that their demand, in some shape, could not be resisted.

If even an individual, in the midst of his misfortunes, should, by a fair understanding, disengage himself from his creditors without discharging the entire debts, it could not be applauded as any remarkable instance of benevolence or honesty if he should afterwards pay the remainder, to relieve the sufferings of the aged and meritorious, as soon as affluence and good fortune had rendered his own condition flourishing beyond example.

Although the case between the government and the officers of the continental army resembles the above in some respects, yet, in other essential particulars, it is a much stronger case, as the claims of the officers are founded on a contract, which in the opinion of the committee, under all the circumstances, has not been fairly rescinded ; and if it has, there cannot possibly exist a doubt, that the commutation contract has not been fulfilled : for, if the officers had been able to have held their certificates to the period in which they were funded, they would not have received their interest according to their contract ; and, besides, the arrears of the interest were then funded at three per cent., which was a clear infringement of the contract, as the arrears ought to have been paid before, instead of being reduced to one-half of their value. The payment, likewise, of the one-third of the principal, was deferred for ten years without interest, which is again a departure from the contract. But the weighty and most important circumstance of all, that the inability of the government to perform its contract inevitably obliged the officers to part with their certificates at the reduced prices of eight for one, presents an argument in equity sufficiently powerful

to satisfy Congress that a claim of some description, in favor of the officers, does in good faith exist.

The results of the Revolution, which have transcended anticipation, are now everywhere seen and admired. They invited our national guest to revisit each State in the Union, to witness in person the unrivalled prosperity and political glory which have been achieved by the war of the Revolution. Among the vicissitudes of the life of this illustrious and extraordinary man, it would be a felicitous incident if his reappearance here, after the lapse of near half a century, should have so excited the feelings of the nation, and occasioned such a recurrence to the trying times of the Revolution, as to be serviceable to his companions-in-arms in the evening of their days.

Under all the circumstances of this highly interesting case, it appears to the committee that one of two modes ought to be adopted for the final settlement of the claim of the memorialists, as reasonable, and becoming the faith and dignity of the nation. First, by the terms proposed by a former memorial: that is to say, of deducting from the arrears of the half-pay, computed from the cessation of hostilities to the present time, the full nominal amount of the commutation certificates, and paying the surviving officers the balance, and henceforward, during the remainder of their lives, paying to them the half-pay stipulated by the resolve of 1780.

Or, secondly, that Congress should proceed upon the equitable circumstances of the case, and pay such a specific sum ratably among the officers, according to their rank and the resolves of Congress, as may appear reasonable and just.

The first has, in substance, been twice reported to the House of Representatives, and not sustained. The committee, therefore, paying a due respect to these decisions, have unanimously agreed to recommend the latter mode, and to confine its provisions to the comforts of the living, and make its acceptance a final discharge of all claims on the part of the surviving officers of the army of the Revolution; and, in conformity with these views on the subject, the committee have herewith reported a bill appropriating the sum of — dollars for the purposes aforesaid. The committee have also annexed to this report the report of 1810, and the report of 1819, and several abstracts of letters from General Washington.

It is but a rational conclusion, that it is the last time that the military officers of the Revolution, in a body, will ask of Congress the favor to consume any of its time concerning them: if their prayer is granted, they will have no inducement; and if it is not, it will be hopeless to make any more solicitations; indeed, they have now not much time to spare; their approaching dissolution is near at hand—a little while longer, and the earthly scene between them and their country will be closed forever.

At the same session, in the House of Representatives, Mr. BURGESS, from the Committee on Military Pensions, made the following report :

The Committee on Military Pensions, to whom was re-committed the bill and amendments, entitled ' An act for the relief of the surviving officers of the army of the Revolution,' report :

"Those who served during the revolutionary war, at different periods thereof, and for whom no provision has been made by law, may be divided

into two classes. The first comprehends the officers of the army, who, under the resolution of Congress, of October 21, 1780, continued in service until the army was disbanded, October 18, 1783, after the establishment of the independence of the United States. Their number is known to have been, at that time, 2,480. The average age of these officers was, when they left the service, thirty years; and, since that period, more than forty-two years have elapsed.

“The decreement of human life, founded on the expectation of it, derived from observation and experience, in several different countries similar to our own, is such, that, upon a fair calculation, not more than 400 of the 2,480 are now alive, and those at the average age of 72 years and upwards. At this advanced age, they ask from their country for some additional compensation. 1st. They ask for this aid now, because they are now unable to aid themselves: at 72, most men are beyond the power to labor, or the hope of acquisition by any kind of business. 2d. They served their country when, without that service, its independence and the establishment of republican government in this hemisphere must have been lost. 3d. They were promised their pay monthly; and, after the war, annuities for life, equal to half that amount. 4th. Congress were without funds; continental money had ceased to be of any value, and the army was unpaid from that time till the close of the war. 5th. The States were dissatisfied with the half-pay establishment, and they offered to surrender their annuities to the United States for an equivalent. 6th. Congress resolved, March 23d, 1783, to give them five years' full-pay, in cash or securities, as an equivalent for, and in lieu of, their annuities. 7th. In place of cash, Congress was obliged, from the total insolvency of the Old Confederation, to give them commutation certificates, signed by the Paymaster General, and payable to them or bearer. These, from inability to pay in the maker, and to wait in the holder, were thrown into the market for cash, and soon fell to 12½ cents on the dollar. 8th. No provision was, or could be, made by Congress for payment or funding of these certificates, till after the adoption of the constitution, when, by the law on that subject, they were again commuted by giving the holders a three per cent. stock for the interest in arrear; a six per cent. stock for two-thirds of the principal; and a deferred stock, bearing no interest till the expiration of ten years, for the other third. 9th. Upon a fair calculation of the probabilities of life, the half-pay annuities of these officers, then 30 years old, were, October 18th, 1783, worth 14.08 years purchase. It is seen that they received for them but ten years' purchase; that is, five years' full-pay. It is also seen, that under this funding system they so received this, that each captain sustained a loss, in interest, of \$2,436 34. By the report from the Treasury Department, it appears that each of these annuitants, being a captain and now alive, would, as half-pay, have received \$10,080. By commutation he received a certificate for \$2,400, by which this officer has lost, and the government saved, \$7,680. These two sums are \$7,680 by the commutation, and \$2,426 34 by the funding, making a total of \$10,106 34 saved by the nation, and lost by each individual of these officers now alive. It must be allowed that, to these officers at thirty years old, the expectation of life could not have been over thirty-two years, and may be said not to have exceeded twenty-eight. A captain then being entitled to half-pay, or \$240 per annum for twenty-five years, would receive \$6,720, but by the commutation he did receive \$2,400. The difference is \$4,320. To this add the loss of interest by the

manner of funding. \$2,426 34, and then it appears the nation did save, and the officers did lose, \$6,746 34. By the last statement it therefore appears that 2,480 officers have lost, and the nation have saved, \$16,730,923 20; and it appears by the first statement that the same officers have lost, and the nation have saved, \$25,063,733 20. The committee do not feel themselves called upon to offer any opinion on the nature of the contract originally made by Congress with this very meritorious class of men, nor upon the manner in which, as it appears, the same was fulfilled. At the close of the war the nation was comparatively small; about 3,000,000. The public debt was heavy, and the then United States had no funds and no revenue. Under these circumstances the government, though obliged to pay, in gold and silver, to the full amount their foreign creditors, was nevertheless enabled to settle, at least this part of their domestic responsibilities, on terms very favorable to the economy of the country. The people are now multiplied to more than ten millions—they are rich, free, and prosperous, and the revenue is large, abundant, and increasing. Any remuneration hitherto proposed to be given to these men is less than a dime to each individual of the nation; and if formed into a stock, and left to some future generation for payment, will, when that generation choose to do it, enable them to recall the memory of those gallant men whose labors and dangers, under God, secured to them their freedom, independence, and prosperity. The committee therefore feel themselves fully justified in reporting that the survivors aforesaid of this first class of those who served during the war of the Revolution, ought to be provided for by law; and, considering all the foregoing facts, they do believe that the justice, honor, and magnanimity of the nation would not be satisfied unless Congress appropriate, for that object, the sum of \$1,000,000."

And again, in the House of Representatives, February 11, 1828, Mr. BURGESS made the following report :

"The Committee to whom was referred the memorial in behalf of those of the surviving officers and soldiers of the army of the Revolution who continued in service until the close of the war, report :

"That your committee have carefully examined the memorial, with the documents, to which reference has therein been made. From these the following facts have been selected, because they, in a more particular manner, are the grounds on which the petitioners rest their claim, both in behalf of themselves and of the surviving non-commissioned officers and soldiers who enlisted for the war, and continued in the service until the end of it. On the 15th of May, 1778, it was resolved by the Continental Congress, that 'all military officers, commissioned by Congress, who now are, or hereafter may be, in the service of the United States, and shall continue therein during the war, shall, after the conclusion thereof, be entitled to receive annually, for seven years, if they live so long, the one-half of their present pay.' And it was resolved at the same time, 'that the non-commissioned officers and soldiers who had enlisted, or should enlist, for during the war, and shall continue to the end, shall then be entitled to receive a reward of eighty dollars.' By the resolves of the 3d and 21st of October, 1780, and of the 17th of January, 1781, it was provided that the

officers who should be reduced on the reform of the army, under the above resolve of the 3d of October, should receive half-pay from the time of their reduction, during life ; and that those of the line of the army, and the independent corps thereof, and of the hospital department and medical staff, who should continue in service until the end of the war, should receive the like half-pay for the same period : provided, however, that the director of the hospital should receive the half-pay of a lieutenant colonel, and that none of the other medical staff should receive more than the half-pay of a captain.

“ At the definitive treaty of peace, signed on the 3d of September, 1783, such of those officers as had survived the war, and continued in the service until that time, became severally and individually vested with a complete right to the reward of half-pay for the residue of their lives ; and each of such non-commissioned officers and soldiers who had so survived and continued, to a reward of eighty dollars. These promises were made in consideration of such services to be performed. Those services were faithfully and successfully performed, and under every kind of difficulty, privation, and suffering. The reward was gallantly won at the point of the sword. It was the price of our independence, purchased with blood, and sanctioned by public faith. These solemn promises having been made on adequate considerations, it remains only for your committee to examine into the manner in which they have been performed. First, in regard to the non-commissioned officers and soldiers.

“ It appears, that, after they had been discharged, and had gone to their respective homes, there was sent to each one of them, by regimental agents, a certificate that eighty dollars were due to him, and that this sum was payable to him or bearer, with interest, at six per cent. per annum, from the 4th of November, 1783. These certificates, as it was evidently intended from their transferable quality, were in general parted with at the market value, which was from one-fifth to one-tenth part of the nominal amount ; and were afterwards redeemed, under the funding system of the United States, in the hands of the ultimate holders. Owing to the low ebb of the public credit, this class of the army lost their promised and expected extra reward, as much as if it had been refused or denied to them. Your committee, therefore, most respectfully submit, whether there ought not to be given to these aged survivors an indemnity for this loss : for, although the account was settled and closed with them, yet the condition of the nation then, and at this time, as well as the principles of equity, seem to call for opening it again, with regard to these men, and making to them some additional compensation.

“ Second. In regard to commissioned officers, Congress, by a resolve of the 22d of March, 1783, offered to those then in the service, as a substitute for this stipulated half-pay, the amount of five years' full-pay, in *money* or *securities*, bearing an interest of six per cent. per annum, at the option of Congress. These securities were to be such as should be given to the other creditors of the United States. In the same resolve, there were offered to the officers entitled, who had retired from the service on the reform of the army, as such, substitute certificates to the like amount. To these offers were annexed two express conditions, viz : first, that they should be accepted or refused by lines and corps, and not individually ; and, second, that such acceptance or refusal should be signified to Congress by the commander-in-chief, as to the army under his immediate command,

within two months ; and by the commanding officer of the southern army, as to those under his command, within six months from the date of the above resolve of 22d of March, 1783. At the time these offers were made, it is evident, from all the calculations on the probabilities of human life, that seven years' full-pay, in advance, would have been somewhat less than an equivalent to the half-pay for life, to the younger class of officers, who naturally are the present memorialists. And your committee are compelled to say, that they have discovered no reason why the government should have denied an individual right of refusing a disadvantageous offer, when the right was individual, and considering the government under the obligation of an express solemn contract. Your committee do not perceive why it might not as well have annulled the original right, as to have enforced the memorialists to abide by the vote of others, who were interested, to put the value of the lives of all upon one equal footing. If, however, it should be considered by the House that an assent given in the manner prescribed by the resolve is binding upon each individual, then your committee beg leave further to observe, that such assent, which is to work so much injury and injustice, ought to appear to have been given and signified strictly according to the conditions of the offer. In examining this part of the subject, your committee do not find any signification to Congress of any acceptance, other than a notice in the journals of a report made by the Secretary of War, on the 31st of October, 1783, and long after the officers had dispersed, that certain lines from New Hampshire to Virginia, inclusive, had agreed to accept. This report itself is not to be found, but certain it is, that no signification was made to Congress, either by the commander-in-chief or the commanding officer of the southern army, or within the times prescribed in the offer ; neither was there ever any resolve of Congress, specifying such assent, or declaring their option, whether to pay in money the amount offered, or to give securities for the same on interest. If the offer had been complied with, according to its sense, your committee are of opinion that the loss of two years' full-pay would have been submitted to, as a new sacrifice, with that patience and disinterestedness which were the distinguishing characteristics of an American officer. But, on a careful examination of this matter, your committee have been forced to the conclusion, that the offer was not so complied with ; which conclusion results from the following considerations, which are most respectfully submitted to the House. From the manner of calculating life-annuities, which is by estimating, on the one hand, the purchase money with compound interest, and, on the other, the probable duration of the life ; from the pressing pecuniary necessities of the officers, and their want of capital to set up, with advantage, in some of the profitable pursuits of civil life ; and from the absence of any specification in the resolve as to time, it is manifest that it was as well the common understanding of the parties, as the legal conclusion, that the offer was to be complied with in advance, or in anticipation of the growing annuities. After the peace, and after the officers had dispersed, a certificate was sent to each individual, indiscriminately, whether he had retired on the reform of the army or had continued in the service, that an amount equal to five years' full-pay was due to him, and that such amount, with interest, was payable to him or bearer. The certificates had no funds whereon to rest, and their market value was not equal to one year's pay ; and, it appears to your committee too much to say that the delivery of this almost valueless paper was a payment in money, according to the sense

of the offer; or, that these certificates were the securities intended thereby, either according to the common understanding of the term, or the distinction expressly made in the resolve itself, between securities and certificates. And these certificates of the Paymaster General, or of the commissioners for settling army accounts, were not securities to any creditor of the United States, until registered or funded, more than the other floating certificates of the Quartermaster General, or the Commissary General, which were issued and made payable, with interest, under express resolves of Congress, during the period of the war. Under these considerations, your committee, in the choice of the alternative, are obliged to say, that, in their opinion, the delivery of these certificates, as well on general principles as on those which govern in courts of law or equity, did not annul the right to half-pay, or exonerate the government from the obligations of the original contract in this regard.

"These certificates, about the 1st of January, 1791, were received in subscription by the government, under the funding system of the United States, at a discount of about twenty per cent. But this transaction, in the opinion of your committee, does not vary the case, inasmuch as the payment was not made until the arrears on the growing annuities amounted to nearly an equal amount, which was altogether too late to be in compliance with the offer of a sum, in advance, for the half-pay for life.

"Under these views of the whole case, your committee are of opinion, according to the principles contained in the reports made to the House heretofore on this subject, which are hereunto annexed, that the memorialists are severally entitled to their half-pay in future, and to an amount for arrears, under a liability to be charged with the nominal amount of the certificates delivered to them respectively; but, inasmuch as by the protracted lives of these memorialists, there would now be an arrear of forty-four years, and as application for payment was not made until the year 1810, your committee have reason to believe that it would be satisfactory to the petitioners, and perhaps more consonant to the feelings of the House, not to carry back such accounts beyond that period; leaving them to be balanced, for all antecedent time, by the certificates which had been delivered. Your committee further beg leave to report, as their opinion, that it would be just to make a suitable annual allowance to the widow of each officer, who, if living, would be entitled to the benefit of this act.

"If, however, the House shall consider that the original right has been compromised, then there is another view of the subject, which has forcibly pressed itself upon your committee, and is now respectfully presented to the House, namely: whether it is not due to national justice and honor, under a review of all the peculiar hardships attending the enforcement of this compromise, and the manner of executing it, on the part of the government, that it should now make good, in a degree at least, from what is absolutely gained to these aged memorialists, the part they actually lost thereby of that recompense or reward, the expectation of which had softened their hardships, lessened their privations, and animated their exertions in bringing the doubtful conflict to a successful issue.

"Great nations are always just; but among private citizens, it would be deemed the height of dishonor and ingratitude to withhold, under the plea of a compromise, from an aged servant, an unpaid balance for hard and dangerous services, by which the very existence of the debtor had been

preserved from the violent assaults of his enemies, and the foundations of his future fortunes laid and established.

"To attain these ends, your committee have prepared a bill, with separate and different clauses to meet each particular object, which they beg leave to report to the House, together with an estimate of the appropriation which may be necessary to carry each one into effect.

"All which is respectfully submitted."

These eminent men, reporting at a period so near the close of the Revolution, were enabled to come to very clear conclusions upon several important facts. They all agree to recommend relief, and fully establish the value of the service, the depreciation, the justice and equity of the claims, and the sacred and moral obligation of the country to provide some adequate measure to redeem the national faith.

A limited pension act was passed in 1818, providing relief for indigent officers and soldiers of the Revolution. This did not meet public expectation; and the act of 1828 extended to the surviving officers and soldiers of the Revolution, who served to the end of the war, full pay for life. This tardy measure of national gratitude was welcome by the whole country as a just tribute to the worth, services and sufferings of the few who then survived.

The men who held the destiny of this nation in their hands have now nearly all passed away; yet there remains upon the journals of Congress an unredeemed pledge to them, of the national faith! The resolution of 21st October, 1780, stands unfulfilled on the part of government.

The circumstances which prompted the passage of that resolution, mark it as a monument of necessity and of wisdom. That necessity emanated, not from a want of patriotism in the officers, but from stern domestic obligations resting upon many of them towards their children, wives, and parents, who were dependent upon them for support; whose wants could not be supplied from the small stipends irregularly paid them—and then only in a very depreciated currency. That resolution, though it relieved nothing of present necessity, gave confidence and hope for the future, and brought more zeal and energy to the defence of the national liberties.

To evidence the necessity and wisdom of the measure, the committee refer to the testimony of General Washington, given in a series of letters written to Congress at different periods from 1778 to '83, at whose instance the resolution of 1780 was evidently adopted. What its necessity, object, and utility were, will fully appear in said correspondence.

The current testimony of Congress in numerous instances corroborates all the documentary history of that period, awarding praise and gratitude and the solemn faith of the nation to the soldiers and officers of the revolutionary army.

At that day it had nothing else to give; and, with self-denial and sacrifice unparalleled in the history of the world, that army, having successfully won by their arms the independence of their country, and for their patient endurance and sufferings the admiration of the world, surrendered their half-pay annuities, and suffered themselves to be disbanded and discharged with a very small pittance of pay, and that in a nearly worthless medium, and returned to their families and friends destitute of any adequate means for re-establishing themselves in the pursuits of civil life.

The committee cannot deem it necessary to add anything more to what

has been so well said in the reports and letters above quoted and referred to; and concur in the sentiment, that good faith, justice and honor, demand that we no longer withhold payment from these old creditors of the country.

It may be contended that the law of 1828, granting full-pay for life to the surviving officers and soldiers of the Revolution, should be an equivalent for all claims of the nature now under consideration.

To such an argument the committee would say that the provision of the act of 1828 was designed as a mere gratuity or charity to the surviving soldier in his old age and decrepitude, and would have been none the less afforded though his commutation had been fully paid; whereas the commutation itself was at the time designed as a part of the hire to be paid for services to be rendered, and if not paid is still due, whatever amount of charity the country may have rendered; and the committee cannot now consent to debit the soldier with the charities afforded him, in settling with him the account of his wages.

It may be noticeable that none of the reports above (five of which were made since the pension act of 1818,) make mention of that act as any offset or equivalent for the unpaid life annuity or commutation certificates. Indeed, in December of the same year of the passage of that act, Colonel Johnson, of Kentucky, as will be observed at the close of his report above; introduces a resolution to pay to the original owners of the commutation certificates the nominal amount thereof, deducting one-eighth therefrom as the value received at the time by the officer.

The act of 1818 was not considered as making any provision for this class of claims, nor should that of 1828, which embraced the identical beneficiaries of the act of 1818, with others, be so considered, because it made a more adequate provision for the maintenance of the needy soldier.

And upon the whole view of the subject, estimating the commutation certificate to have been worth, in the hands of the officer, one-eighth only of the nominal value, and finding that the said Benjamin Mooers did receive certificates of commutation to the nominal amount of \$1,600, the committee bring in a bill for the deficiency, \$1,400, and interest to be computed at six per cent. from the day of the date of such commutation certificates.

IN THE SENATE OF THE UNITED STATES.

APRIL 6, 1852.
Ordered to be printed.

Mr. BRODHEAD made the following

R E P O R T :

[To accompany bill S. No. 340.]

The Committee of Claims, to whom was referred the memorial of John McAvoy, report :

Having re-examined this case, the committee concur in the report made thereon at the last session of Congress, and adopt the same as a part of this report, and recommend the passage of the accompanying bill.

IN SENATE—February 11, 1851.

The Committee of Claims, to whom was referred the petition of John McAvoy, report :

The petitioner was a private in company H, 8th regiment United States infantry, serving in Mexico, under the command of General Worth, and honorably discharged at New-Orleans, May 5, 1847—his term of service having expired.

He states that, in February, 1847, being then at Saltillo, Mexico, he was placed on sick furlough and furnished with an order from General Worth, requiring the quartermaster to provide himself and wife with transportation from Saltillo to New Orleans; in compliance with which, they were transported as far as Brasos St. Jago, where they were informed by Assistant Quartermaster Hill that transportation to New Orleans could not be provided—the vessels being all engaged in removing the troops to Tampico.

Under these circumstances, the petitioner states that he was obliged to pay twenty dollars for passage to New Orleans, where he was discharged as above stated, and he asks that the amount be refunded to him.

These facts are substantially sustained by the affidavits of the claimant, his wife, and Dinna Thompson; the two latter being present and seeing the money paid. It is further stated that the order on the quartermaster department for transportation to New Orleans was lost after they left the Brasos—for want of which the item was rejected by the accounting officers.

Believing the claimant is equitably entitled to the small pittance of relief which he asks, the committee recommend the passage of the accompanying bill.

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IN THE SENATE OF THE UNITED STATES.

APRIL 6, 1852.

Ordered to be printed.

Mr. SHIELDS made the following

REPORT:

[To accompany bill S. No. 341.]

The Committee on Military Affairs, to whom was referred the petition of Nathan Weston, jr., late additional paymaster United States army, praying extra compensation as provided by the act of July 19, 1848, respectfully report:

That it appears from the evidence in the case, that the petitioner, while in the discharge of his duties at Saltillo, in Mexico, was thrown from his horse upon the pavement, by which fall his shoulder was dislocated and other severe injuries received; that while laid up by his wounds in Mexico he contracted a bilious disease, which with the injuries received, disabled him from the discharge of his official duties; that in consequence of said disability he applied for, and received from General Taylor, leave of absence for a limited time, and returned to the United States; that upon reporting himself at headquarters at Washington, his application for extended leave of absence was denied; whereupon he tendered his resignation, which was accepted. The committee are of opinion that the resignation of the petitioner was rendered necessary, and was wholly induced by the character of his wounds and the state of his health at the time of his application, and that he could not have safely or prudently returned to the service—an opinion which the condition of his health subsequently confirms. He has also received a pension, for the injury received—showing that it is permanent.

The committee are disposed to regard a resignation under these circumstances as equivalent, for the purposes of this application, to an honorable discharge, and therefore recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

APRIL 6, 1852.

Ordered to be printed.

Mr. SHIELDS made the following

REPORT:

[To accompany bill S. No. 342.]

The Committee on Military Affairs, to whom was referred the petition of Richard M. Bouton, praying compensation for the discovery and use of his machine for manufacturing percussion caps for the use of the army, have had the same under consideration, and respectfully report:

That at the first introduction of percussion arms into our military service, a few years ago, we were entirely dependent for caps on foreign manufactories. An article of such importance, and, from its general use, likely to become indispensable in war, could not fail to engage the attention of the science and inventive genius of our countrymen. Accordingly, Mr. Richard M. Boughton, in January, 1842, at the request of the commanding officer at Watervliet arsenal, N. Y., applied himself to the invention of a *machine* for making percussion caps. After some years of unremitting labor and study he succeeded in constructing one, which has been in successful operation since the year 1845, in the Watervliet arsenal, and at the arsenal and navy-yard in this city. The value of the machine can be judged by the fact, that *one man*, at \$1 20 per day, can make 60,000 caps, at a cost of two cents per thousand; while by the old hand or French process, *seven men* would be required, at say 75 cents a day, (making \$5 25,) to fabricate 50,000, at 10½ cents per thousand; making the difference in cost, for an equal number, \$5 10. The value of such an expeditious mode of supplying a necessary article of fulminates, especially in time of war, must be readily admitted; and the saving of time, labor, and expense to the government, is certainly such as to justify it in rewarding the inventors for their ingenuity and perseverance.

For the right and use of this discovery there are, however, two other competitors—Martin W. Fisher and George Wright, for each of whose machines merit is claimed equal to Bouton's. By Bouton's machine the stars are cut from strips of sheet-copper and swedged into the proper cap form; they are then to be charged by hand with fulminate powder—a process described as not free from danger. By Fisher's invention these caps were charged with expedition and safety. Before the introduction and use of the latter's cap-charging machine, the average cost to the government for 1,000 caps was \$1, but by this machine 30,000 were charged for less than \$1. This machine was first used in 1844, at the Washington arsenal, and has been since in successful operation.

The third claimant, George Wright, ingeniously combined the two former, and cuts the star from the copper in sheet, forms and charges the cap, and delivers it completely finished, ready to be varnished. Each machine has its peculiar merit, though the claims of the respective inventors may seem to conflict. Fisher's claim was reported favorably during the 30th Congress, and a bill reported for his relief, which was not reached on the calendar. The House Committee on Military Affairs, on the 28th March, 1850, also reported at large, giving a full and comprehensive detail of the history, use, and merits of the three machines, rendering it unnecessary for your committee to dwell more at length on the subject.

The fact that the claimants, at the time of inventing their machines, were employed in the public service, and that the government was entitled to the exercise of their mechanical skill and talent, has some consideration with the committee in determining the amount of compensation. They therefore recommend that something, in the shape of bounty, be given to the claimants, as a reward for their skill and inventive genius, and as an encouragement to others; and also, in recompense of some of the benefits which the government has derived from the free use of the invention. They report the accompanying bill, therefore, for their relief.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1852.

Ordered to be printed.

Mr. NORRIS made the following

REPORT:

[To accompany bill S. No. 345.]

The Committee on Patents and the Patent Office, to whom was referred the memorial of Gideon Hotchkiss, a citizen of the United States, for relief in the matter of his application to the United States Patent Office, for the extension of his patent for improvement in water-wheels, ask leave to report :

That it appears by the original on file, that a patent was granted to him on the 9th day of January, 1837, for "a new and useful improvement in the construction of reacting water-wheels and their appendages," for the term of fourteen years from the 30th day of November, 1836.

That some time in the commencement of the year 1849 he addressed a letter to the Hon. H. S. Conger, then a member of the House of Representatives, stating his intention to apply to the United States Patent Office for an extension of his patent, and desiring to be informed at what time such application should be made. In reply, Mr. Conger, under date of February 5, 1849, said: "I have called upon the Commissioner of Patents this morning, in relation to your matter, and was informed by him, that it is a rule of the board not to hear applications for extension of patents until within six months of the time of expiration of existing letters." (See letter marked B.) This correspondence took place more than a year previous to the expiration of the patent.

From the tenor of Mr. Conger's letter, Mr. Hotchkiss supposed that he could make his application for the extension at any time "within six months of the time of expiration" of his patent. He accordingly applied therefor in the fore part of the month of November, 1850. Upon making such application, he was informed by the Commissioner of Patents that there was not then time to give the sixty days' notice required by law before the patent would expire; and that his only remedy would be by application to Congress for relief. Accordingly, Mr. Hotchkiss thereupon returned home, and proceeded to collect evidence in view of making his application to Congress, and started on his return to Washington in the latter part of January, 1851. On his route, one of the cars, himself therein, was thrown from the track of the New York and Erie railroad into the Delaware river, breaking several of his ribs. While lying ill from this accident, he sent one Addison McKee to Washington in charge of his business, who, upon arri-

ving was advised by senators and members, that the session was so far advanced, that it would be useless to make the application during that session. For these reasons, his application has been delayed until the present session.

From the statement of receipts and expenditures sworn to by the petitioner, (see Doc. C,) wherein the account is put down with great minuteness of detail, it appears that the total receipts during the existence of the patent amounted to the sum of \$19,785 40. His expenditures during the same period, including losses on obligations, which are estimated as a portion of his "receipts," and so stated in his account, amount to the sum of \$13,925 50; thus leaving him the sum of \$5,859 90 as his remuneration. But of this last amount the petitioner claims a deduction should be made, allowing him a small per diem sum for his own time and labor bestowed in introducing his improvement into use. Allowing the justness of such claim, and placing the amount at one dollar per day, and three hundred working-days in each year, it would reduce the net profits of his invention to the sum of \$1,659 90; an amount which certainly cannot be deemed "a reasonable remuneration for the time, ingenuity, and expense bestowed upon the same, and the introduction thereof into use," as contemplated by the act approved July 4, 1836.

The testimony (see Doc. D) submitted in regard to the utility of the invention, and the disadvantages under which the petitioner labored in introducing it into use, fully satisfies your committee of the merits of his claim for the extension prayed for.

Mr. Hotchkiss asks for the extension of his patent for the term of seven years, (the term to which he would have been entitled, had his patent been extended by the "board,") and a bill to that effect is herewith submitted.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1852.

Ordered to be printed.

Mr WALKER made the following

R E P O R T :

[To accompany bill S. No. 846.]

The Committee on Revolutionary Claims, to whom was referred the petition of Mrs. Eliza M. Evans, only child and heir of Col. Anthony W. White, deceased, late a colonel in the revolutionary army, have had the case under consideration, and now report :

They find the said Anthony W. White to have served in the revolutionary army, with the rank of colonel ; that prior to the year 1788 he advanced to the United States, for the support of his regiment, the sum of \$3,750 ; that from 1788 down to the year 1838, either the said White, or his legal representatives, made continual efforts to obtain a settlement of his accounts and a repayment of the loan ; and that during this time, both the Secretary of War and the committees of Congress uniformly reported in favor of the justice of the claim ; that finally, on the 7th July, 1838, an act was approved to refund to the legal representatives of said White the sum aforesaid.

The claim now under consideration is for the interest upon this sum of \$3,750, from the 4th of July, 1780, to the 7th of July, 1838. Taking into consideration the facts that the claim grows out of an advance of money actually made to the government at a most critical period of its history, and that no delay or laches are found in the prosecution of the claim, the committee cannot withhold the recommendation that the claim be allowed. They therefore report a bill directing the payment of interest at six per cent. upon the sum of \$3,750, from the 4th of July, 1783, (the period at which demand was first made) to the 7th July, 1838.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1852.
Ordered to be printed.

Mr. BRODHEAD made the following

R E P O R T :

[To accompany bill S. No. 347.]

The Committee of Claims, to whom was referred the memorial of Major H. L. Kendrick, report:

The facts in this case are clearly stated in the report made thereon at the last Congress. The petitioner asks a credit in the settlement of his accounts for \$1,294 66 of public funds, which was stolen from his possession during its transportation from Puebla to Vera Cruz.

It is believed that Major Kendrick used all reasonable vigilance that the most prudent caution could suggest to protect the money, and that the loss can be in no way chargeable to the slightest negligence on his part.

The previous report is hereto annexed. The committee report a bill.

IN SENATE—January 28, 1850.

The Committee of Claims, to whom was referred the petition of Brevet Major H. L. Kendrick, report:

That the evidence seems to establish the following facts: Major Kendrick was ordered by General Worth, about the middle of June, 1848, to sell certain ordnance and ordnance stores, property of the United States, at Puebla, in Mexico. He made the sales, and was charged with the transportation of the money received, it being silver, to Vera Cruz. He put the money into wooden boxes strongly made, and placed them on board two wagons, over which he placed a special guard; and, the more effectually to insure the safety of the money, he ordered Corporal W. J. Dickson, who had been doing duty in the ordnance department both at Puebla and on the march, in addition to the guard, to watch the specie wagons, and to sleep in one of them. While the command was at Jalapa, on the march to Vera Cruz, on the night of the 6th of July, 1848, one of the specie boxes was pried open, and \$1,294 66 stolen from it. On the same night, said Dickson, who up to that time had sustained a trustworthy character, deserted the service under circumstances leaving no reasonable doubt of his having taken the money. It appears Major Kendrick was unable to obtain iron chests at Puebla for the transportation of the money, and was obliged to

make use of the wooden boxes. The boxes were too large to be placed in the tent, and admit its use for other purposes. The wagons were placed only ten or twelve yards from the tent, and in full view of it. The special guard was at all times kept over them. Major Kendrick frequently visited the wagons, giving and repeating orders calculated to make the guard vigilant and watchful. He never left the camp except on duty, and never without calling the attention of Lieutenant Totten (the only subaltern in the company) and the guard to be particularly watchful of these wagons. He seems to have used all reasonable efforts for the apprehension of the thief and the recovery of the money. The said Dickson, prior to this act, had been deemed by the officers and non-commissioned officers of the company honest and faithful.

From all the evidence, the committee are of opinion that the money was actually stolen as alleged, and that the loss was not attributable to any neglect of duty or want of care on the part of the memorialist. They therefore report the accompanying bill for his relief.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1852.
Ordered to be printed.

Mr. BRODHEAD made the following

REPORT:

[To accompany bill S. No. 348.]

The Committee of Claims, to whom was referred the petition of John Tucker, report:

This case was examined by the Committee of Claims of the last Congress, who made a report of the facts, accompanied by a bill, in which this committee concur.

The report is hereto annexed, and the passage of the accompanying bill is recommended.

IN SENATE—August 23, 1850.

The Committee of Claims, to whom was referred the memorial of John Tucker, report:

The memorialist represents that in the year 1838 he was mustered into the military service, in Captain Hindley's company, Major Garrason's battalion of Florida volunteers, and served through the campaign against the Indians as a private, "and in addition performed the duties of a chaplain," and that he has received no compensation in either capacity. That when it was ascertained that the company would be mustered out of service, (by order of Governor Read) the officers of the battalion were convened, and by their advice the claimant was appointed by Major Garrason, the commanding officer, a chaplain in the army, and as such he was mustered out of service, and his name taken from the roll of Captain Hindley's company; by which means he lost his pay as a private. These facts are certified to by Major Garrason.

There does not appear to have been any legal authority for his appointment as chaplain; and even if the committee were disposed to consider the propriety of allowing pay for such service, there is no evidence of the time when it commenced, and, as before remarked, the appointment to act in that capacity does not appear to have been made until about the time of the discharge of the battalion from service.

The act of Congress of March, 1845, provided for the payment of Major Garrason's command, and the committee are of opinion that the memorialist is entitled to pay as a private under the provisions of that act; they therefore recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1852.

Ordered to be printed.

Mr. BRODHEAD made the following

REPORT:

[To accompany bill S. No. 351.]

The Committee of Claims, to whom was referred the petition of J. Boyd, report:

The petitioner was assistant marshal for taking the late census in the parish of Iberville, in the State of Louisiana. Soon after his appointment, as he states, three-fourths of the parish was overflowed, by the occurrence of two crevasses, rendering the roads impassable, except by the use of boats; and, in order to accomplish the object of his appointment within the time specified, he was obliged to employ two men and a boat for fifty-five days, (that being the only mode of getting from house to house,) by which he incurred an extra expense of \$275. He also claims, for his own additional time and labor, \$100.

Mr. Senator Soulé certifies to the condition of the country at the time, and says "the various amounts by him charged seemed to be fair and reasonable, and, upon the whole, not beyond what I am pretty sure was actually expended by him."

This was a casualty that could not have been foreseen, either by the government, at the time of fixing the compensation of the assistant marshals, or by the petitioner when he accepted the appointment; and it is evident that, in such a condition of the country, the necessary expense of getting from place to place must have been greatly increased beyond that ordinarily required.

The committee are of opinion that the extra expenses actually incurred, in consequence of this sudden inundation of the country, and which could not have been avoided without an abandonment of the important duty required, and could not have been anticipated at the time the duty was assigned, should be refunded.

The claim for personal labor and time is disallowed.

The committee report a bill in accordance with these views.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1852.

Ordered to be printed.

Mr. FELCH made the following

REPORT:

[To accompany bill H. R. No. 231.]

The Committee on Public Lands, to whom was referred the bill H. R. 231, respectfully report:

That they have had the same under consideration, and recommend the passage of the bill. The following report, made in the House of Representatives, but not printed, presents the facts in the case:

The Committee on Public Lands, to whom was referred the petition of James W. Campbell, assignee of John J. Jackson, praying for relief on account of two certain tracts of land lying in the Palmyra land district, Missouri, entered and paid for by said John J. Jackson, but for which he never received any title from the United States, on account of the neglect of the United States land officers, respectfully report:

That on the 26th day of June, 1838, John J. Jackson, then a citizen of Audrain county, Missouri, and being about to settle himself permanently in said county as a farmer, went to Palmyra and applied to the land office there to enter the two following described tracts of land, lying in said county of Audrain, to wit: the east half of the northeast quarter of section No. 29, township No. 51, north of the base line, range No. 5 west, containing eighty acres; also, the northwest quarter of the northwest quarter of section No. 28, township No. 51, range 5 west, containing forty acres; and paid therefor the government price of \$1 25 per acre, (in the aggregate one hundred and fifty dollars,) and received a duplicate receipt for each of said pieces of land, signed "A. Bird, receiver;" one of them numbered 19,513, and the other numbered 19,514, and both dated June 26, 1838. Wm. Wright was then register of the said land office, and said A. Bird receiver. Said John J. Jackson subsequently, to wit: on the 6th day of April, A. D. 1841, sold and conveyed said land to the petitioner, Jas. W. Campbell, of Pike county, Missouri, for three hundred and thirty dollars, and surrendered said duplicate receipts to him. (The said duplicates and the deed of said Jackson to said Campbell have been produced before your committee.) It appears that said entries of said Jackson were not entered on the books of said office, and no return made of them to the General Land Office; and one William Middleton, of said county of Audrain, subsequently,

to wit: in the years 1850 and 1851, was permitted to enter, and did enter, said tracts of land (as appears from the certificate of the Commissioner of the General Land Office,) and has thus obtained the title of the United States thereto; and said Campbell has lost the said land without any fault of his, and, as appears to your committee, by the fault of the United States land officers at Palmyra, or one of them. Your committee therefore consider that the claim of the petitioner for relief at the hands of Congress is a meritorious one, and they consider that the least measure of relief which can be afforded him (consistently with justice on the part of the government to one of its citizens, who has thus suffered by the default of the agents of government,) is to permit him to enter at said land office, *without payment*, the same quantity of land which he has lost. They therefore report a bill for that purpose, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

APRIL 8, 1852.
Ordered to be printed.

Mr. FELCH made the following

R E P O R T :

[To accompany bill S. No. 354.]

The Committee on Public Lands, to whom was referred the petition of the register and receiver of the land office at St. Augustine, Florida, praying compensation for making locations of lands under the Arredondo claim, respectfully report :

That the heirs of Fernando de la Maza Arredondo claimed, by virtue of a grant from the Spanish authorities before the cession of that territory, a tract of thirty-eight thousand acres of land in Florida. This claim became the subject of adjudication ; and by the decision of the Supreme Court of the United States at the January term, 1839, the grant was held good and valid, and an order made for its location in a specified manner. The location could not be made conformably with the direction of the court ; but the grant having been confirmed by judicial decree, the confirmees claimed the right, by virtue of the 11th section of " An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," approved May 26, 1824, and an act of May 23, 1828, extending the provisions of that law to claimants in Florida, to enter the like quantity of land elsewhere in that State, which had been once offered for sale. The question as to the right to make such location was also a subject of adjudication in court, and a final decree was entered, establishing the right as claimed. Entries of lands under these judicial decisions have been made at the St. Augustine land office, as is stated in the petition and returns, to the quantity of over twenty thousand acres. For their services in making these entries, the officers at the land office receive no compensation. They now ask to be allowed the same amount or per-centage on these entries as they receive on those made for cash.

In the last report of the Commissioner of the General Land Office, (pages 23 and 24) attention is called to this subject, in connexion with some remarks on the location of military land warrants. The Commissioner says : " The services demanded of the district land officers in the location of military land warrants, under the act of 28th September, 1850, equal, if not exceed, in each case, those connected with selling a tract of land. It is earnestly recommended that a reasonable allowance be authorized by law for such special duties, and that such allowance be made for the services which the land officers in Florida may render in the location of the Arre-

dondo thirty-eight thousand acre grant in that State, under certain judicial decrees of confirmation.

In regard to this particular case, the officers at St. Augustine represent "that the labor attendant upon making locations under and by virtue" of said claim, "and for which they receive no compensation, is at least ten times as much as is required to make a cash entry;" and they suggest the recommendation of "an allowance of the same commission to the land officers in Florida, for making locations under and by virtue of the said Arredondo claim, as they are entitled to on cash sales."

Congress has already, by an act passed at the present session, given this compensation on the entry of the bounty land warrants; and the committee are satisfied that the same amount should be allowed for the locations in the case under consideration. They therefore report a bill covering the locations which are authorized to be made under the decisions above mentioned.

IN THE SENATE OF THE UNITED STATES.

APRIL 8, 1852.

Ordered to be printed.

Mr. WALKER made the following

REPORT:

The Committee on Revolutionary Claims, to whom was referred the memorial of John S. Russworm, legal representative of William Russworm, deceased, have had the same under consideration, and now report :

That this case was before the Committee on Revolutionary Claims of the Senate at the first session thirtieth Congress, and that the committee then made an adverse report. Upon the present reference no additional evidence was submitted to the committee, or, in fact, any evidence at all. The case was, therefore, improperly withdrawn from the files and referred. It is therefore reported back, with the following resolution:

Resolved, That the claim ought not to be allowed, as the proofs in the case now stand.

IN SENATE—April 6, 1848.

The Committee on Revolutionary Claims, to whom was referred the petition of John S. Russworm, the son and legal representative of William Russworm, deceased, an officer of the army of the Revolution, praying to be allowed interest on commutation pay, have had the same under consideration, and report :

That no proofs, documents, or papers accompany the petition. The petitioner alleges that he is the son and legal representative of William Russworm, deceased, who was a lieutenant in the army of the Revolution, and belonged to the continental troops of North Carolina, and served until the close of the war. He further states that he petitioned Congress in 1838 for commutation pay, and that an act was passed allowing his claim, but without interest. The evidence upon which the act of 1838 was passed is not to be found on the files of the Senate, and your committee have no means of determining upon the justice of the claim allowed by that act. If the claim were properly allowed, the question arises, is the petitioner entitled to interest upon it? This question, the petitioner alleges, was passed upon by the Senate when the aforesaid act of 1838 was under consideration, and the interest disallowed; and in that opinion the committee fully concur. The resolution of the 15th of May, 1778, promised seven years'

pay to all military officers commissioned by Congress. The resolution of October 21st, 1780, provided half-pay for life to the same officers, in lieu of seven years' full-pay; and the resolution of the 22d of March, 1783, commuted the half-pay for life to five years' full-pay. Provision was made by law, soon after the close of the 'war, for the settlement of these claims; and this claim, if it had been presented to the proper board and found due, would have been allowed and promptly paid. The United States, in the opinion of the committee, are under no obligations to pay interest upon a claim that has been suffered to sleep for nearly fifty years. They therefore recommend the following resolution:

Resolved, That the prayer of the petitioner be rejected.

IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1852.

Ordered to be printed.

Mr. SHIELDS made the following

REPORT:

[To accompany bill S. No. 337.]

The Committee on the District of Columbia, to whom was referred the memorial of sundry citizens of the county and city of Washington, in this District, and the adjoining county of Maryland, as also the resolutions of the Legislature of the State of Maryland on the same subject, report:

That they found the approaches to the seat of government, by roads and bridges, within the boundaries of the District of Columbia, have all been made free of toll, and improved by the government, with two exceptions, of which the turnpike road leading from Washington towards Baltimore is the principal. Upon this road, which is not more than three miles in length, terminating on the District line, a toll continues to be collected upon all travel and transportation, including that of marketing and other supplies furnished by the surrounding country for the people of Washington. Upon a view of this road, it does not appear to be in that condition of construction and repair contemplated by the charter granted to the company by Congress; on the contrary, it appears the company have failed to comply with many of the provisions of their charter, and have forfeited others; and that legal proceedings are now pending against them, in the district court, to annul and abrogate the said charter.

The committee, therefore, decline in any way to interfere with these proceedings, until the issue be determined and the charter be abolished. But, in that event, they recommend that the sum of \$10,000 be employed in the proper grading, widening, and improving of said road, including the construction of substantial bridges or culverts, where necessary.

The committee having also examined into the condition of Maryland avenue, leading from the Capitol to a junction with the great highway aforesaid, and with other roads at the same point, to which avenue the memorialists have also invoked the attention of Congress, they believe it is highly expedient and necessary to change its present rough condition, by making provision for its being opened, graded, gravelled, and planted with trees, and recommend that the sum of \$5,000—supposed to be sufficient for the purpose—be provided for this object.

The committee would state, in connexion with this subject, their opinion, that, in order to insure the construction and repair of this avenue and road, and indeed every other contemplated improvement of this nature, upon the best plan, and to have the work done with promptitude and

proper regard to economy, it will be proper to place it under the direction of one of the United States engineers, whose skill and experience in such works, in this District and throughout the country, are so well established. The responsibility of character of such an officer would be a sufficient guarantee for the substantial execution of the work, and the proper application of the public money.

The committee, therefore, recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1852.

Ordered to be printed.

Mr. SHIELDS made the following

REPORT:

[To accompany bill S. No. 358.]

The Committee on the District of Columbia, to whom were referred the papers and documents relating to the construction of a canal basin in Georgetown, at the terminus of the Chesapeake and Ohio canal, at Rock creek, beg leave to report:

That they have applied to the Bureau of Topographical Engineers for the necessary information concerning this work, and have received, in reply, the following statement of the considerations which require the improvement and preservation of the basin:

1. The general inland trade of the country, which this canal is so well adapted to develop and to promote.

2. The extensive interest of the United States, as a stockholder of the canal.

3. The extensive interest of the United States, as a lot-holder in the city of Washington.

4. The important national considerations involved in a canal connexion with the arsenal at Washington, the armory at Harper's Ferry, and the coal and iron region of the Alleghany.

5. The important national considerations, similarly involved, in reference to the navy-yard at Washington.

Colonel Abert further states, in said reply, that it is not in the power of the bureau to make an estimate of the probable cost of such a work, without a carefully digested plan, the result of accurate survey and measurement, and borings of the soil; and that an appropriation of twelve hundred dollars would be necessary for that purpose.

In view of the declared public utility of the canal basin, the committee recommend that said appropriation be made; and the accompanying bill is therefore respectfully submitted.

IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1852.
Ordered to be printed.

Mr. PRATT made the following

REPORT:

[To accompany bill S. No. 859.]

The Committee of Claims, to whom was referred the petition of Mary E. D. Blaney, administratrix of the late Major George Blaney, deceased, have had the same under consideration, and report:

Major Blaney was an officer of the corps of United States topographical engineers, and for several years previously to his death, in 1835, he was employed in superintending the erection of the fortifications at Oak island and Cape Fear river, in North Carolina, and was required to act as disbursing officer and as assistant commissary of subsistence at those points, for which he claimed commissions and compensation to the amount of \$6,401 48, which was disallowed by the accounting officers of the treasury. It appears that, at the time of his death, he had on deposit in the bank at Fayetteville, N. C., to his credit, \$3,182 55, of which amount \$2,438 12 was claimed as his private funds, and for which he gave a check to the petitioner. On presentation of the check, payment was declined until the department had been consulted. The acting Secretary of War directed that the money in the bank, standing to the credit of Major Blaney, should be carried to the credit of the Treasurer of the United States, which was accordingly done.

After the decision in the parallel case of Major Delafield, in 1844, where the legality of similar charges was brought before the circuit court for the district of New York, and sustained by Judge Betts, (which decision was confirmed by an equal division of the bench of the Supreme Court,) the charges of Major Blaney were allowed by the accounting officers, so as to leave a balance to his credit of \$1,606 50, which sum was paid to the petitioner on the 15th March, 1847. On this sum, so withheld for a period of nearly twelve years, interest, amounting to \$1,156 68, is claimed.

The petitioner urges, "in behalf of herself and her orphan children," that her case is not the ordinary one of a debt due by the United States for services performed, but one in which money belonging to her was forcibly taken, by a high officer of the government, and applied to the public use, and "wrongfully and illegally withheld from her" for a long period of time.

The petitioner also prays the passage of a law directing that such further allowances be made in the accounts of her late husband, as come within the rule laid down in the decision of the Delafield case. These appear to

consist of charges for additional compensation for services as assistant commissary of subsistence at Oak island and Cape Fear river, at \$20 per month, amounting to \$2,744, and a difference of \$210 45 between the sum claimed and that allowed for disbursements at Cape Fear river.

As these items have been rejected by the accounting officers, after a careful revision of the subject, subsequently to the decisions in the cases of Major Delafield and General Gratiot, and have decided that "the duty [of acting assistant commissary of subsistence, for which the charges are made] constituted an essential branch of the extra service assigned him, for a faithful performance of which, on his part, the regulations provided a specific compensation, in the form of a per diem or commission," the committee do not perceive any good grounds for a special allowance in this case, so far as the extra compensation is concerned; but your committee are of opinion that, under the circumstances of this case, the claimant is entitled to interest on the amount withheld by the government, and report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1852.
Ordered to be printed.

MR. BRODHEAD made the following

REPORT:

[To accompany bill S. No. 360.]

The Committee of Claims, to whom was referred the petition of John A. Lynch, report:

The memorialist claims compensation for services as a clerk in the Treasury Department, from the tenth day of August to the seventh of December, 1846, at \$3 per day—\$306.

Mr. Young, at that time chief clerk of the department, certifies "that Mr. Lynch was employed from August 10th to 7th December, 1846, as charged in the above account, and for which no pay was received."

The following note is submitted, as evidence of the sanction of the department to the employment of the service:

"DEAR SIR: I consider your situation permanent; for, if you continue faithfully to discharge your duties as a clerk, whenever your temporary appointment expires I shall make your place permanent.

"Very respectfully,

"R. J. WALKER.

"JOHN A. LYNCH, Esq."

This paper has no date, but the following memorandum is endorsed upon the back—"Rec'd Aug. 8, 1846."

The services having been rendered under the above assurance of the head of the department, as appears from the certificate of the then chief clerk, and not having been paid for, the committee are of opinion that the claimant is entitled to relief, and report a bill for that purpose.

IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1852.
Ordered to be printed.

Mr. STOCKTON made the following

REPORT:

[To accompany bill S. No. 361.]

The Committee on Pensions, to whom was referred the memorial of Mary F. B. Levely, report:

That the memorialist is the widow of Captain Henry Levely, who commanded the privateer "Nonsuch," of Baltimore, in the war of 1812, and who was disabled by wounds received in action with the enemy. It appears that Captain Levely did not apply for the pension to which his wounds gave him a claim, until December, 1829, when he was placed on the pension-roll, and received at the rate of \$240 per annum from the 2d December, 1829, to the 1st of July, 1837, when his pension ceased, as stated by the Commissioner of Pensions, "in consequence of the exhaustion of the privateer pension fund;" and from that date he received no further pension to the day of his death, on the 13th of April, 1841. After the exhaustion of the said fund, acts of appropriation were passed for the payment of the pensions which had been paid therefrom, but no portion of said appropriations was paid to Captain Levely. The memorialist prays for the amount to which her husband was entitled as a pensioner on said fund; also, that she be allowed arrears of pension from the time her husband was disabled in the service.

Captain Levely, in a memorial to Congress, dated December 26, 1829, prayed that his pension should commence from the date of his disability (October, 1812,) and in that memorial he says: "It is becoming your memorialist to state, that while he was invited by the smiles of fortune to rely upon her promised favors, he was willing to leave said fund to those of his fellows whose fate had been more rigorous." The pension of Captain Levely could only be paid from a specific and limited fund, and all having a claim thereon could, at their option, relinquish the whole or a part of said claim to other claimants. The department of government charged with the disposal of the privateer pension fund could not know to whom the distribution should be made, unless the proper application and proofs were presented, and the committee do not admit the propriety of the claim of the memorialist, which was unsuccessfully urged by her husband.

The case of the memorialist was presented to the Senate during the thirty-first Congress, and a report thereon was made, in which the committee concur in allowing to the memorialist the amount which should have been paid to her husband from certain appropriations made by Congress;

which report the committee deem proper to make a part of this, and recommend the passage of the bill accompanying the same.

IN SENATE—January 30, 1851.

The Committee on Pensions, to whom was referred the memorial of Mary F. B. Levely, widow of Captain Henry Levely, of the privateer service in the war of 1812, beg leave to report :

That the husband of the memorialist was in the enjoyment of a pension granted to him in consequence of wounds received in engagements with the enemy. In a letter to the chairman of the committee, dated February 20, 1850, the Commissioner of Pensions states that the husband of the memorialist was the commander of a private armed vessel during the war of 1812, and that his pension ceased on the 1st of July, 1837, "in consequence of the exhaustion of the privateer pension fund," and that "there does not appear upon the files of the office any application or correspondence in relation to the claim from the above date to that of his decease, or since."

The memorialist prays that the amount due her husband at the time of his decease may be paid to the family—and it appears that he died on the 13th of April, 1841.

By the act of June 15, 1844, the sum of eighteen thousand dollars was appropriated "for the payment of invalid pensioners heretofore paid from the privateer pension fund—their several pensions to commence from the time they were stopped in consequence of the exhaustion of said fund." No part of this or any subsequent appropriation appears to have been paid to the deceased; and believing that the memorialist is justly entitled to relief, the committee report a bill granting it, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1852.

Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT:

[To accompany bill S. No. 92.]

The Committee on Public Lands respectfully report :

By the treaty of September, 1830, the Choctaw Indians ceded their lands east of the Mississippi, and agreed to emigrate, as a tribe, to the country provided for them west of Arkansas. Many of them, however, being unwilling to remove, the 14th article stipulated that all who desired to remain and "become citizens of the States," might do so on signifying their intention to the agent for the tribe, and should be thereupon entitled to a reservation of a section of land for each head of a family, to include their improvements, with an additional quantity for each unmarried child. A residence on the reserved lands of five years after the ratification of the treaty, was prescribed as the evidence of an intention to "become citizens of the States;" after which, on the one hand, a grant in fee-simple, as in cases of purchases made by white settlers, was to issue to the Indian reservee; and on the other hand, he was to be perpetually debarred from all participation in the Choctaw annuities. About 7,000 Indians, constituting one-third of the tribe, determined to avail themselves of this provision in the treaty. They remained the prescribed time; they were recognised as citizens of Mississippi by the constitution of that State; the government ceased to extend to them its guardian care; they no longer derived any aid whatever from the United States in the shape of schools, blacksmith shops, annuities, or the protection of an agent. They were placed, in all respects, on the same footing with other citizens of the different States. The disadvantages of their new position they felt to the fullest extent. But the privilege for which they had paid so large a price, the undisturbed possession of their property, of their homes, they were not permitted to enjoy. Owing to the neglect and mismanagement of those whose duty it was to ascertain their names and locations, their intention to remain, and the fact that they had actually remained, was not, with a few inconsiderable exceptions, officially reported until after the lands embraced in their claims had been sold, and were, of course, beyond the control of the government.

To remedy the flagrant injustice thus done, Congress directed, in the third section of an act "to provide for the satisfaction of claims arising under the 14th article of the treaty concluded with the Choctaw Indians on the 30th September, 1830," that when the United States had disposed of lands

covered by claims of this description other lands should be allowed them, and that certificates, or scrip, receivable in the land offices to that effect, should be issued, with this proviso: "that not more than one-half of which (certificates) shall be delivered to said Indian, until after his removal to the Choctaw territory, west of the Mississippi river;" a provision intended not for the benefit of the Indian, but to induce him to surrender his rights as a citizen of Mississippi, and reunite with the main body of the tribe.

Subsequently, by the third section of the Indian appropriation act of 3d March, 1845, it was provided that the half thus withheld should not be issued or delivered at all, but that "the amount of said scrip, estimating the land at one dollar and twenty-five cents per acre, shall carry an interest of five per cent., which the United States will pay annually to the reservees respectively, or to their heirs and legal representatives forever."

The aggregate funded is reported by the Commissioner of Indian Affairs to be \$872,000. The Indian claimants, through their chiefs and the general council of the tribe, petition for the payment of the principal. The government agent and the Choctaw delegate strongly recommend the measure, and the Commissioner of Indian Affairs concurred in the recommendation.

The investment was evidently conceived in a spirit of benevolence, and intended to protect the Indian from his own improvidence. All the evidence before the committee, however, goes to show that the policy on which it is based is erroneous. The Indian claimants have uniformly insisted that the interference of Congress, in funding the half of their scrip payable west, is at war with the spirit of the treaty under which their claims originated, inasmuch as their lands were to be held absolutely in their own right, and they themselves were recognised as competent to manage their own affairs. The United States agent reports that it is the unanimous wish of all concerned that the amount funded be paid. The Choctaw general council, a body which has always maintained, in its relations with the government, a high character for discretion and good sense, concurs with the agent that annuities are a source of infinite mischief; that instead of furnishing any remedy for improvidence, they tend directly to increase it; that they paralyze energy, and stimulate a ruinous credit system. They add, that in this particular case the evils incident to annuities generally are greatly aggravated by the peculiar individual proprietorship of the funds, leading to infinite subdivisions among the heirs of decedents, and giving rise to litigation and fraud. So far as the Indians are concerned, it seems to be admitted on all sides that the annual payment of interest is a positive evil, and that the principal should be turned over in bulk.

Independent of these particular considerations, affecting only the payment of annuities to small classes of persons entitled, there are others which experience has shown are applicable to the system at large, and which make that policy, in our Indian relations, of questionable propriety. After all the efforts of the United States—by means of schools and missionaries, a policy of enlarged philanthropy and paternal care, seconded by these annual contributions in goods and money intended to entice them from the chase to the field, and allure them to the habits of civilized life—it may be doubted whether annuities have not, in most instances, done more to retard and frustrate our humane policy than they have to advance it. These agencies intended to operate on the transformation of the Indian character, must be of that stern nature which leaves no choice in their adoption, and must be exerted upon the rising generation. The annual sti-

pend of money originated in the idea that it was a necessary aid in enabling the Indian to cast aside the fixed ideas and traditional customs of the aboriginal race, and assume the new duties and relations of civilization. This policy is proved by experience to have originated in a false estimate of his character and capacities. With a constitutional indolence which nothing but want and necessity can subdue, it is in vain to expect that the scanty annuity which alleviates his wants shall also prompt him to industry. With whatever virtues this system may be endowed in its adaptation to the wild race, in effecting the first steps towards their amelioration, it loses all the arguments in its favor in its application to the civilized tribes. These, by the constant exertions of our government, acting upon a succession of generations at a vast outlay of expenditure, have approached the confines of civilization just at the period of their history when they have almost reached national extinction. The Choctaws, of all the civilized tribes, are said to have attained the highest civilization. Their schools and their Christianity—their written constitution and laws—their fixed habits of life and agricultural pursuits—have qualified them long since to become their own guardians. They not only desire the final payment of the principal, but such a disposition seems necessary to enable the claimants to engage more fully and profitably in their agriculture, to which that nation has long since devoted itself.

As a financial arrangement it is equally desirable to the government. The constant addition, by successive treaties, is rapidly swelling our annual expenditures and virtually increasing our national debt. The treasury is now in a condition to enable it to discharge this annuity, and thus, at the same time, accomplish an object beneficial to both parties, besides an act of justice more in consonance with the objects of the treaty than the payment of the annuity heretofore.

While the provisions of the act of Congress referred to contemplated the issuance of scrip, yet, under the subsequent act of 1845, this was in terms countermanded, and the amounts funded, with interest, payable "to the reservees respectively, or to their heirs and legal representatives, *forever*." These annuities are thus constituted strictly private claims of Choctaws, and not a debt due to the nation; claims which are represented by their owners, and *not by their government*. The consent of the Choctaw nation was, indeed, unnecessary. They are not rights arising under treaty, but a satisfaction for the violation of it. The fourteenth article of the treaty secured *lands* to those who should remain and become citizens of the States. These lands they never received; and for this violation of their rights an act of Congress gave them scrip, which they accepted, and one-half of which they received. It was thus an adjustment of a question between the United States and citizens of Mississippi. The *nation* had emigrated, where the reservees afterwards emigrated; interest was substituted for the principal, and again this arbitrary arrangement of the United States was acquiesced in, the interest since 1847 paid, and received by the reservees and their heirs respectively. Their names, and the amounts due, are ascertained by a pay-roll; hence there have been, and could be, no assignments and transfers of their claims to others. To effect a legal payment of these claims, consistently with their true character, it would seem to follow that the amounts should be paid, respectively, to each claimant, or his heirs or legal representatives, and not to the nation or to an assignee. As a measure of precaution, however, it would be well to obtain the formal sanction

of the national authorities of the tribe, which, having been given to the original application, will, no doubt, be readily accorded again to the final measure here proposed.

The committee have no hesitation in expressing the opinion, that the claims should be paid, the interest arrested, and that without any treaty for that purpose. An act of Congress, as it created these rights, is competent to provide for their satisfaction.

IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1852.
Ordered to be printed.

Mr. GWIN made the following

R E P O R T :

[To accompany bill S. No. 365.]

The Committee on Naval Affairs, to whom was referred the petition of Purser T. P. McBlair, asking to be allowed credit for certain payments made to forward officers of the steamship Princeton, have had the same under consideration, and report :

That the petitioner asks to be reimbursed the sums paid by him as purser of the United States steamer Princeton, in 1843, to certain acting forward officers, who had been duly appointed and rated by Captain Stockton, the commander of said ship, under special authority of the Secretary of the Navy, amounting in the aggregate to the sum of \$575 19, as follows:

To William Taylor, acting boatswain-----	\$70 91
John H. Carley, acting carpenter-----	220 41
Armstrong Flanerfelt, acting sailmaker-----	283 87
	<hr/>
	575 19

The ground upon which the sums above mentioned were disallowed by the accounting officers was, that the persons to whom the payments were made were not included in the number permitted by law, of officers of the grades to which they were respectively appointed.

The representations of the petitioner are fully sustained by the official evidence before the committee, and it also appears that the exigencies of the service required the special appointments which were made by Captain Stockton; and had the purser refused to pay the men, he would have been subjected to arrest and trial by court-martial.

Congress has repeatedly afforded relief in similar cases; and your committee being of opinion that the petitioner is justly entitled to the allowance he claims, report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

APRIL 16, 1852.

Ordered to be printed.

Mr. PRATT made the following

REPORT:

[To accompany bill S. No. 866.]

The Committee of Claims, to whom were referred the petition of the widow of Rinaldo Johnson, and the petition of Hodges & Lansdale, providing indemnity for tobacco destroyed by the British, in 1814, have given the subject a thorough investigation, and now report :

That Commodore Barney, in 1814, commanded the United States flotilla designed by the American government to protect the Chesapeake bay and its tributaries from the naval force of the enemy ; that to prevent the capture of the vessels under his command, he was compelled to abandon the Chesapeake, and was induced to sail up the Patuxent river, one of its tributaries, with the hope that the British would be unable, or at least unwilling, to follow with their larger vessels. This expectation of the commodore was not realized ; he was pursued by the enemy, and was ultimately compelled to blow up his vessels to prevent their capture.

It is well known to the Senate, that from this period the Patuxent river was permanently occupied by the naval forces of the enemy, and became the point from which various military expeditions were ordered against the surrounding country, terminating with the capture of Washington, and the burning of the Capitol. General Winder was placed in command of this military division ; the militia was called out to resist the landing of the British forces, and for a considerable period were successful in several instances in preventing the landing, and in all instances in driving the enemy back to their vessels.

It appears, from the evidence, that two public warehouses had been erected many years before this period, upon the margin of the Patuxent, for the inspection and deposit of the tobacco grown by the citizens of Prince George's county—one at the village of Nottingham, the other at Magruder's Ferry ; that these houses were in 1814 filled with hogsheads of tobacco, the property of the planters of that county, or of merchants who had purchased it for shipment ; and that the tobacco for which remuneration is now claimed by the petitioner, R. Johnson, had been deposited in the warehouse at Magruder's Ferry, and that the tobacco for which payment is asked by Hodges & Lansdale was deposited in the warehouse at Nottingham. The evidence conclusively establishes the fact that the warehouse at Magruder's Ferry was burned by the British, with all the tobacco it contained, and that all the tobacco in the warehouse at Nottingham was either taken away or burned by the enemy.

In investigating the right of the petitioners to indemnity from the federal government, your committee at once perceive that the petitioners could never have claimed indemnity under the general laws of 1816 and 1817, because the relief designed to be afforded by those acts *expressly and exclusively* applied to injuries to *real property*. The act of 1816 provides "that any person who, in the time aforesaid, has sustained damages by the destruction of his or her *house or building* by the enemy, while the same was occupied as a military deposite under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage, provided it shall appear that such occupation was the cause of its destruction."

Your committee have been unable to recognise the force or propriety of the distinction which makes the United States liable for *real property* destroyed by the enemy, and which exempts the government from liability for *personal property* destroyed under the same circumstances; they are unable to appreciate the justice of a rule which makes the government liable for a house burned by the enemy, and exempts it from liability for the personal property burned in the house.

Your committee are of opinion that the United States should be held liable to reimburse her citizens, whenever private property has been (in accordance with the usages of civilized warfare) destroyed by a public enemy, *because of its use* for military purposes by the authority of an officer or agent of the government.

Your committee believe that the facts, to which they will now very briefly advert, fully establish the right of the petitioners to relief, under the principle here laid down.

First. In reference to the warehouse at Magruder's Ferry, it appears that a considerable American force was stationed behind this warehouse, which being filled with tobacco, afforded complete protection against the cannon of the enemy, and that a battle was fought with the British vessels, which continued until the ammunition of our troops was exhausted, and they were consequently obliged to retreat. It is clearly proven that upon the retreat of the American force, the British landed and burned the warehouse, with the tobacco of the petitioner, R. Johnson, and others therein contained. In regard to the tobacco destroyed at the Nottingham warehouse, it appears that this warehouse was for a considerable time the depository of the military stores intended for the use of the militia employed in the defence of this exposed section of Maryland, and that upon one occasion the tobacco was rolled, by the directions of the officer in command, from this house, with which a breastwork was formed, from behind which the enemy were fought and repulsed. It also appears that when the enemy subsequently landed and proceeded to Washington, they destroyed or took away all the tobacco deposited in this warehouse which belonged to the petitioners, Hodges & Lansdale, and others.

Your committee further report that no possible doubt can exist as to the quantity of the tobacco which belonged to the petitioners, because it is evidenced by tobacco notes now in their possession, or deposited in the State Department, which designate each hogshead and the net weight of its contents. There are many precedents, to which your committee do not deem it necessary to refer, where the government have paid for personal property destroyed under similar circumstances. The value of the tobacco is also established by satisfactory proof, but the committee have deemed it better,

in the bill which they have prepared for the relief of the petitioners, to provide that the proper accounting officers of the treasury shall ascertain, from such proof as may be laid before them, the quantity and value of the tobacco destroyed, and shall pay the value so to be ascertained.

There being no distinction in principle in the right of the petitioners to relief, the committee have reported a bill for their joint relief, which they confidently recommend to the favorable consideration of the Senate.

IN THE SENATE OF THE UNITED STATES.

APRIL 16, 1852.

Ordered to be printed.

Mr. MALLORY made the following

REPORT:

[To accompany bill S. No. 367.]

The Committee on Naval Affairs, to which were referred the memorial and accompanying papers of Captain Hiram Paulding, U. S. Navy, praying that the proper accounting officers of the treasury may be directed to adjust his accounts and pay him certain sums of money disbursed by him, and specifically set forth in his memorial, has had the same under consideration, and report:

Captain Paulding was assigned to the command of the new frigate St. Lawrence, by the Secretary of the Navy, in the year 1848, and ordered upon special and independent service having reference to the then political difficulties on the continent of Europe. A copy of the Secretary's order is herewith appended. The difficulties in regard to Holstein and Schleswig, and a general revolutionary movement throughout Germany, and the pending struggle between Austria and Hungary, seemed to call for the presence of a naval force in the northern part of Europe, to which the cruising ground of the Mediterranean squadron could not be extended. Under this order, the St. Lawrence arrived at Southampton in December, 1848, where she was received, as the representative of the United States, with distinguished honors by all classes of people. The municipal authorities visited the ship, and presented to Captain Paulding an engrossed resolution, sealed with the seal of the borough of Southampton, passed by them unanimously, inviting the officers to a banquet. Upon the landing of the first boat from the ship, the British flag from the pier-head was lowered, and that of the United States hoisted in its place; and every mark of kindness and honorable welcome in their power was exhibited while the ship lay there. It was the first opportunity our naval officers ever had of accepting similar attentions from the authorities or people of Great Britain upon their own soil. Capt. Paulding regarded all these demonstrations not as mere idle or personal civilities, but as designed to express towards the government of the United States those kindly feelings and generous sympathies of the people of England which it is manifestly our interest to cultivate, and which he did not feel himself justified to disregard. In return for the civilities thus extended to his flag and officers, Captain Paulding received the visits of the authorities and people of the borough on board the ship, and the expense attending the courtesies thus extended was defrayed by the purser of the ship as a

proper expenditure in behalf of the government, under the orders of the memorialist, and amounted to the sum of \$963 92.

The ship next proceeded through the channel to the North Sea, to Bremer Haven, the port of Bremen. Here the Arch Duke of Oldenburg, with a numerous suite, in accordance with his previous notification to Capt. Paulding, visited the ship, and was received in a manner, and by an entertainment, suitable to his rank; and, successively, the Senate of Bremen, with a numerous suite of from seventy to one hundred, and many of the most distinguished persons of Germany, the Queen of Greece, the Duke of Oldenburg, with his royal family, and Prince Stephen of Austria, the Baron Von Gagern, late President of the Imperial Parliament of Frankfort, and Duckwitz, Minister of the German Marine, were received on board and entertained.

In the summer of 1849, deputations from the Prussian government and from the Parliament of Frankfort were recommended to Captain Paulding, with reference to the formation of a German navy, and visited the ship, by which expense was also incurred.

The ship thence proceeded to Stockholm. Here Count Platen, King's Chamberlain, Minister of Marine, and the representative of the sovereign authority in the absence of the King, with a numerous suite of distinguished persons, was received on board and entertained.

The aggregate of expenses thus incurred in the entertainment, on board the ship, of these and numerous other visitors, was \$3,653 92, of which sum the amount of \$2,690 was expended in the entertainment of the civil and military officers of the governments of the countries visited by the ship, and who were received on board by their request. The balance was expended at Southampton in entertaining the municipal authorities and the people of that borough, as heretofore stated.

Of the obligation of the government to pay the amount just stated, your committee does not entertain a doubt. No commander of a public vessel abroad is at liberty, unless under peculiar circumstances, to decline such visits as were made to the St. Lawrence by the sovereign authorities of countries with which it is our interest to cultivate amicable relations. The interchange of such civilities exercises a decided and beneficial influence, while, at the same time, the naval preparation and efficiency of our country is most wisely and humanely displayed; and for the payment of this sum your committee refers to the action of Congress in similar cases.

[See naval appropriation act of February 20, 1833, section 5, allowance to Master Commandant John D. Sloat, \$1,360. Civil and diplomatic appropriation act of March 2, 1833, allowance to Captain Daniel Turner of \$1,182 78, and to Captain George W. Storer, \$500. Act of July 7, 1838, for the relief of Captain Daniel T. Patterson, allowing him \$3,391; and act of June 17, 1844, for the relief Captain Charles W. Morgan, allowing him \$4,200.]

Your committee is not aware of any precedent for the payment of the last specification. Its expenditure, however, took place under peculiar circumstances, at an interesting and exciting period of the political movements of Europe, and was governed by the most patriotic considerations. The ancient borough of Southampton passed, by the acclamation of its authorities, a resolution the most complimenting to our flag and our people; and with its entire population sought to honor both. These courtesies were recited and remarked upon with approval and pleasure by the people of Great

Britain generally, as tending to connect more closely and firmly America with Britain; and had they been received with indifference, or with the commonplace and ordinary acknowledgments, he would not have met the just expectations of his government and people, nor would he have pursued that course which the interests of the navy and the peaceful and happy intercourse of the two countries seemed to dictate. With these views, your committee reports upon these sums separately, by a bill.

IN THE SENATE OF THE UNITED STATES.

APRIL 19, 1852.

Ordered to be printed.

Mr. ARCHISON made the following

REPORT:

[To accompany bill S. No. 370.]

The Committee on Indian Affairs have examined the petition of Calvin B. Seymour, of Stewart county, and State of Georgia, together with the statement accompanying it, and find the following facts stated :

That on the 13th May, 1836, said petitioner and his partners had goods, wares, and merchandise of the value of five thousand nine hundred and eighty dollars, stored in the warehouse of Henry W. Jernighan & Co., in the town of Roanoke, in the State of Georgia, and that the said warehouse was taken possession of by certain troops in the service of the United States; and that whilst in the possession of the troops, the town of Roanoke was attacked by the hostile Creek Indians, the troops defeated, the warehouse burnt, and the goods taken or destroyed by the Indians. The petitioner also shows that he purchased from his partners, of the firm of W. & H. Boynton, the goods, wares, and merchandise aforesaid, all their interest, and that he alone is now interested. Upon the facts above stated the committee are of the opinion that the petitioner is entitled to indemnity, and therefore report a bill.

The committee have also examined the petition, and proofs accompanying it, of Willard Boynton, surviving partner of the firm of W. and H. Boynton, and find the facts, as stated in his petition, to be, that he also, together with his partner, had goods, wares, and merchandise to the value of three thousand two hundred and one dollars and twenty-three cents (\$3,201 23) stowed in the same warehouse, and at the same time were taken or destroyed by the Creek Indians as before stated; therefore, in the opinion of the committee he is entitled to indemnity.

IN THE SENATE OF THE UNITED STATES.

APRIL 19, 1852.

Ordered to be printed.

Mr. WADE made the following

R E P O R T :

[To accompany bill S. No. 372.]

The Committee of Claims, to whom was referred the petition of Priscilla C. Simonds, report :

It appears that Moses H. Simonds, the son of the petitioner, was captain of company H, third regiment of Missouri mounted volunteers, and was mustered into the service of the United States on the 12th June, 1847. That while in the discharge of his duty, and *en route* for Santa Fe with his company, Captain Simonds sickened and died at Council Grove on the 25th day of July, 1847. That after his death, his property and effects, consisting of two horses, clothing, and military equipage, &c., valued by Lieutenant Cannon, of said company, under oath, at \$418, were taken possession of by Major Reynolds, of said regiment, agreeably to the 94th paragraph of the Rules and Articles of War, but never accounted for by him, either to the representatives of the deceased officer or to the government.

General Jesup, in answer to inquiries from the committee, states, that it appears by the papers that the major of the regiment (Reynolds) did, on the decease of Captain Simonds, immediately secure all his effects, as provided by law ; and it further appears, upon examination at the Adjutant General's office, that he failed to send any inventory to the War Department, as provided for by law. Major Reynolds is also dead ; and there does not now appear to be any means of recovering the property, or its value, from that quarter.

Under the peculiar circumstances of this case, the committee are of opinion that the helpless and widowed mother of this meritorious officer, who died in the active service of his country, is entitled to the favorable consideration of Congress, and that relief should be awarded to her, at least to the extent of the value of the property which was taken possession of by the authorized officer of the government. They therefore report a bill for her relief.

IN THE SENATE OF THE UNITED STATES.

APRIL 19, 1852.

Ordered to be printed.

Mr. UPHAM made the following

REPORT:

[To accompany bill S. No. 375.]

The Committee on the Post Office and Post Roads, to whom was referred the petition of Samuel F. Butterworth, praying compensation for services in carrying the mail, report :

That they have had the same under consideration, and that in their opinion the claim of the memorialist is well sustained by the evidence filed in the case, and they therefore report the accompanying bill for his relief.

The subject was before the Senate at the 1st session of the 30th Congress, when Mr. Niles, the chairman of the Committee on the Post Office and Post Roads, made a report in favor of the claim, accompanied by a bill for the relief of the petitioner, which for want of time was not considered by the Senate.

At the 1st session of the 31st Congress, the claim was again favorably considered by the Committee on the Post Office and Post Roads, and a bill reported for the claimant's relief, which also failed of consideration.

The following are, in substance, the facts in the case, upon which the memorialist relies for the action of Congress in his behalf:

On the 23d of October, 1837, Peter B. Starke made a contract with the Postmaster General for the carriage of the mail from Columbus to Jackson, Mississippi, for four years, to wit: from June 30, 1838, to June 30, 1842.

On the 1st July, 1839, Starke sold to the petitioner an equal moiety in the contract and stage property, and also of "all the moneys to be received for the conveyance of passengers, &c., on said route," for five thousand dollars, and on that day articles of copartnership were entered into by the parties.

In consequence of this partnership the above contract with Starke was changed at the department; and Starke and Butterworth became the contractors with the Postmaster General, and agreed to perform the contract which Starke had made, upon the same terms and for the same period.

On the 19th of December, 1839, the partnership was dissolved, and the entire interest of Starke in the concern was purchased and paid for by Butterworth, who continued to carry the mail and perform the contract. Starke's interest in the mail pay ceased with the quarter ending 31st December, 1839, as appears by his own affidavit, and by the assignment on the back of the articles of copartnership.

On the 1st January, 1840, the Auditor of the Post Office Department was notified of the dissolution of the partnership, and that Starke had no further interest in the contract; but as it is a rule of the department not to release parties to a contract until it has been fully performed, nor to diminish its securities, and as the contractors officially known to it were "Starke and Butterworth," it was necessary to retain this firm name; and, at the same time, insure the payment for the mail service to Butterworth. To effect this purpose, a notice in writing was sent to the Auditor of the Post Office Department, requesting the Auditor to pay no drafts for mail service under that contract, (except one of a prior date for \$1,900, in favor of one Oliver,) unless it bore the signature of that notice, which was signed "Starke and Butterworth," in Butterworth's handwriting. This notice was assented to at the time by Starke, as he states in his affidavit, and was received by the Auditor, and recognised and acted upon by that officer.

On the 10th of March, 1840, nearly three months after Starke had sold all his interest in the contract, and in the moneys arising therefrom, as he himself admits, he made a draft on the Auditor of the Post Office Department, over his individual name, for the sum of \$2,862 36, in favor of James Gould. This was done without the knowledge or consent of the petitioner, as Starke swears in his affidavit. The draft was presented to the Auditor, Col. Gardner, who refused, as he states, to pay it, "on the grounds of the notification filed—that all drafts should be signed by the signature of the firm—and of the prior sale and transfer by Starke to Butterworth."

This draft was subsequently presented to Mr. Whittlesey, the successor of Col. Gardner as Auditor of the Post Office Department, and paid, and that amount was deducted from the mail pay due to the petitioner, in the settlement of his accounts with the department.

The committee are of opinion that this deduction should not have been made, but that the petitioner was entitled to the compensation for the mail service performed by him, as stipulated in his contract.

IN THE SENATE OF THE UNITED STATES.

APRIL 19, 1852.
Ordered to be printed.

Mr. DAWSON made the following

REPORT:

[To accompany bill S. No. 376.]

The Committee on Patents and the Patent Office, to whom was referred the memorial of William R. Nevins, a citizen of the United States, praying for the extension of a patent granted to him for "a certain useful improvement for rolling and cutting crackers and biscuits," ask leave to report:

That a patent of said machine was granted to the petitioner on the second day of March, A. D. 1836, and that said patent expired on the second day of March, A. D. 1850; that some time during the year 1837 it was ascertained by the patentee that the same was invalid by reason of a defective specification and claim, and he thereupon applied for and received a re-issue of his patent, which re-issue was dated the 9th day of May, 1848, and continued in force until the expiration of the original patent, in March, 1850.

Mr. Nevins, on the 19th day of March, 1850, petitioned Congress for the extension of his patent. The petition was duly referred to your committee, who, on the 27th day of March, 1850, reported adverse to the prayer of the petitioner.

On the 23d of March, 1852, the petition was again referred to your committee. It appears by the affidavit of a number of individuals engaged in the business of manufacturing ship-biscuits and crackers, in the city of New York, who use the invention of Mr. Nevins, that the saving effected by it is at least twenty-five per cent.; thus materially reducing the price of those articles.

The petitioner sets forth, that "owing to ill health, want of means and facilities to prevent infringement" of his patent, he has failed to receive an adequate remuneration for the time and labor bestowed on his invention and its introduction into use.

The statement of his receipts and expenditures is as follows, viz:

"Amount of cash paid on account of my patent dated March 2, 1836: For machines, and travelling expenses, four thousand six hundred and sixteen dollars and eighty-four cents (\$4,616 84.)

"Amount of cash received on account of my patent dated 2d March, 1836: For machines, and rights to use said machines, two thousand and fifty-five dollars (\$2,055.)"

From this statement it appears Mr. Nevins at the expiration of his patent had incurred a loss amounting to two thousand five hundred and sixty-one dollars and eighty-four cents. The evidence of the utility of the invention is satisfactory to your committee, and they herewith submit a bill.

IN THE SENATE OF THE UNITED STATES.

APRIL 19, 1852.

Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT:

The Committee on Pensions, to whom was referred the memorial of William Butler, report:

That the memorialist claims a pension for a wound alleged to have been received while in the public service, on board the steam frigate *Fulton*, at the time her magazine exploded, on the 4th of June, 1829. The evidence in the case shows that the memorialist was in the service as stated, and that on the 4th of June, 1829, was sent to the hospital, and on the 6th returned to his duty, and continued to serve until he was discharged in January, 1830. About eighteen years after the blowing up of the *Fulton* the memorialist applied, unsuccessfully, to the Pension Office for a pension.

The committee are not satisfied, from the evidence before them, that the alleged disability was occasioned by any wound or hurt received by the memorialist while in the service of his country, and therefore recommend the passage of the following resolution:

Resolved, That the prayer of the petitioner be rejected.

IN THE SENATE OF THE UNITED STATES.

APRIL 20, 1852.
Ordered to be printed.

Mr. COOPER made the following

REPORT:

[To accompany bill S. No. 379.]

The Committee on Indian Affairs, to whom was referred the memorial of Messrs. Amos and John E. Kendall, claiming to be reimbursed for moneys belonging to them, wrongfully paid out by the government of the United States to the "Western Cherokees" or "Old Settler Indians," have had the same under consideration, and respectfully report:

That it appears the memorialists were employed by written contract entered into with the duly authorized delegates of the "Western Cherokees," under date of July 12th, 1843, as expressed in the preamble, "to aid them in making their rights and condition clearly known to the government and people of the United States, in the confidence of receiving at their hands remuneration for the property of which they have been despoiled, and obtaining new guarantees to protect them in their property and persons." Connected with this contract, as security for the payment of an entirely contingent compensation, was coupled a power of attorney, authorizing the memorialists "to demand and receive from the treasury of the United States, or from the proper office or officers thereof, five per cent., or one-twentieth part of any and everything of value which may be granted or appropriated on account of said claims, to be received directly from the United States, without any further act or authority by or from the said Cherokees west."

"By law, such a power is irrevocable, as will appear not only by decisions of British courts, but likewise by those of the Supreme Court of the United States." (See 2 Espinassee, Nisi Prius, p. 565, and authorities referred to; also Hunt *vs.* Rousmanier, 8 Wheaton, 201-216.) The same doctrine was recognised by Attorney General Gilpin, in his opinion of April 20, 1837.

That the services were faithfully performed by the memorialists, appears, first, by the endorsement on the contract made by the duly authorized delegates, the same who had before signed the treaty of 1846, after the ratification of that treaty, authorizing and requesting "the Secretary of War to pay the commissions stipulated in the within contract, out of any moneys which may be found due to them under the said treaty; it being our intention that this contract shall be executed in good faith." Secondly, by the report of Hon. William Medill, Commissioner of Indian Affairs, dated February 8, 1849, (Senate Ex. Doc. No. 32, 1st session 32d Congress, page 25,) in which he says: "The files of this department attest the assiduity and ability

with which Messrs. Kendall and Stambaugh attended to the duty intrusted to them, and I think it highly probable that the 'Western Cherokees,' or 'Old Settlers,' are greatly indebted for the stipulations made for their benefit in the treaty of 1846, to the researches and persevering efforts of their counsel. The evidence upon which I have based my opinion, is my own knowledge of the personal exertions of the counsel named," &c. And by the reference made to these claims by Hon. Orlando Brown, the successor of Mr. Medill, in his annual report dated November 30, 1849, in which he says: "A considerable amount will be due to that portion of the Cherokees known as the old (or original) settlers west of the Mississippi, who, as a separate and distinct community, have incurred liabilities of various kinds, and, among others, for valuable and efficient services rendered them in prosecuting their claims against the government, and which, it is well known, were greatly instrumental in effecting the negotiation of those claims, and the large allowances in consideration of them."

Thirdly, by the letter of the Secretary of the Interior, of the 18th July, 1851, (page 79, Senate Ex. Doc. No. 32, 1st session 32d Congress,) in which he says: "I have carefully examined the claims of Messrs. Thompson Harris and Kendalls against the Indians for professional services, and from the evidence before me, I am satisfied that they are just and reasonable, and should be paid."

It thus appearing that there was a regular power of attorney, made by the proper and authorized representatives of the "Western Cherokees" to the Messrs. Kendall, containing an assignment of five *per centum* of the fund which might be recovered for the use of the said Cherokees, the committee are of opinion that equity and good faith unite in requiring the payment of such sum as may be found due to the claimants by the proper accounting officers of the government. They have therefore reported a bill, requiring the First Comptroller to examine the claim of the memorialists, and if he shall find that a power of attorney was executed, and an assignment made by the authorized representatives of the "Western Cherokees" to the claimants, and that, by act of the United States, such portion of the fund as was due to them under the assignment was paid over to the Indians against their consent, and after notice by the claimants to the contrary, in such case he shall report the amount due to them, which is directed to be paid, out of any money in the treasury not otherwise appropriated.

IN THE SENATE OF THE UNITED STATES.

APRIL 20, 1852:
Ordered to be printed.

Mr. WADE made the following

REPORT:

[To accompany bill S. No. 380.]

The Committee of Claims, to whom was referred the petition of Sally J. Mathews, report:

The petitioner asks compensation for services rendered by her late husband, William P. Mathews, as a temporary clerk in the Treasury Department, between the 1st of September, 1842, and the 14th of May, 1843.

It appears that Mr. Mathews was appointed an extra clerk in that department in 1841, and was paid for his services until the close of August, 1842, when he was informed by the chief clerk that, in consequence of the provision in the 15th section of the appropriation bill of that year, the department could no longer pay the extra clerks, and they generally left off work. But he proposed to continue his services, with the understanding that "he would depend upon an appropriation from Congress for his compensation." He was accordingly employed within the above mentioned period—one hundred and seventeen days—for which compensation at the rate of \$3 per day is claimed, together with interest.

The then chief clerk of the Treasury Department certifies to the performance of the service, and the justice of the claim for compensation.

The committee think the services should be paid for. The claim for interest is rejected upon general principles. The accompanying bill embodies these views.

IN THE SENATE OF THE UNITED STATES.

APRIL 20, 1852.
Ordered to be printed.

Mr. GEYER made the following

R E P O R T :

[To accompany bill S. No. 383.]

The Committee on Pensions, to whom was referred the memorial of F. M. Balster, widow of John Balster, report:

That John Balster, deceased, who was the husband of the memorialist, served at the Washington arsenal as an enlisted artificer of ordnance from September, 1842, to December, 1846, when a siege train company was formed for service in Mexico, to which he was attached, at his own request; and through the war he rendered valuable and effective service as chief laboratorian. After his return from Mexico, he re-enlisted at the Washington arsenal as armorer, in January, 1848, where he continued to serve until he was transferred to the Charleston arsenal, in June, 1850, where he held the rank of armorer, and was killed by an accidental explosion which took place in the laboratory of the arsenal on the 31st January, 1852, while engaged in the performance of his public duties. The officers under whom he served, in bearing testimony to the merits of the deceased, say that he was an intelligent, skilful, faithful, and valuable citizen, whose death was a loss to the service. He left a widow and three young children in very destitute circumstances; and the memorialist, his widow, now prays that in consideration of the long, faithful, and valuable services of her husband, she be allowed such pension as may be just and reasonable.

The committee regard this as a very meritorious case, not provided for by the pension laws, and for which special provision ought to be made, and report a bill accordingly.

MS.

under consideration,
Strubing, widow of

to her some appropriate and intrinsic value of acres each, situate in the presentment to James Diemer, upon certain conditions in the petition said James Diemer presented to the revolutionary committee on the twelfth day of September, one thousand seven hundred and seventy-five, and for Lord one thousand seven hundred and seventy-six, that the legal and equitable claim of the said James Diemer is now

Diemer were made, as alleged assignees have any legal or equitable claim in lieu thereof, such

grants having been made, as a reward to a British subject, Diemer was, till subsequent to the war, for services rendered by said subject to the benefit of said grants, on the conditions necessary to perfect the war carried on by his government for remuneration for such services to the Government of Great Britain, and not for this reason the committee are of no relief. But if this reason be not sufficient, the United States is equitably bound to her as she is entitled to have, the compensation for her services as a petitioner is not entitled to any reward. The said James Diemer, after the

IN THE SENATE OF THE UNITED STATES.

APRIL 20, 1852.

Ordered to be printed.

Mr. HALE made the following

REPORT:

The Committee on Private Land Claims, having had under consideration, by order of the Senate, the petition of Catharine Strubing, widow of James Strubing, report:

That the petitioner prays that Congress would make to her some appropriation, graduated in some measure by the quantity and intrinsic value of two several tracts of land, of five hundred acres each, situate in the State of Florida, granted by the British government to James Diemer, grandfather of her last husband, James Strubing, upon certain conditions in said grants mentioned and set forth, but which conditions said James Diemer was prevented from complying with by the occurrence of the revolutionary war; the said grants being respectively dated the twelfth day of September, in the year of our Lord one thousand seven hundred and seventy-five, and the seventeenth day of October, in the year of our Lord one thousand seven hundred and seventy-four; and she further alleges, that the legal and equitable interest in said tracts which belonged to the said James Diemer is now vested in her.

It appears that the grants to the said James Diemer were made, as alleged in the petition, and that if he or his heirs or assignees have any legal or equitable claim to the land, or for any appropriation in lieu thereof, such claim is in the petitioner.

But it appears to your committee that said grants having been made, as is alleged by the petitioner, by the British government to a British subject, as it is alleged and shown the said James Diemer was, till subsequent to the revolutionary war, in consideration of services rendered by said subject to said government, and he was deprived of the benefit of said grants, and of the opportunity of performing the conditions necessary to perfect the title in himself, by reason of a public war carried on by his government against the United States, the claim for remuneration for such loss, if it exist, is a claim against the government of Great Britain, and not against that of the United States; and for this reason the committee are of opinion that the petitioner is entitled to no relief. But if this reason be not sufficient, and the government of the United States is equitably bound to make such reparation to the petitioner as she is entitled to have, the committee are still of opinion that the petitioner is not entitled to any relief. It is neither proved nor alleged that the said James Diemer, after the date

of said grants, or either of them, and prior to the revolutionary war, ever entered upon said tracts, or either of them, or exercised any control or right of ownership over either, or performed any one of the conditions upon which the grants, or either of them, were to be perfected, and the title vested in him, or that he was making any preparation or had any intention so to do.

It further appears by the papers accompanying the petition, that in the year one thousand seven hundred and eighty-nine, the said James Diemer became, by the proper steps to be by him pursued, under the naturalization laws of the United States, a citizen of the United States, and by the date of his will, a copy of which accompanies the petition, that he lived to as late a period as the year of our Lord one thousand eight hundred and nineteen; but it is neither shown nor alleged that he, in his lifetime, nor his children, nor his grand-children, nor either of them, in their lifetime, ever made any claim on account of said grants to the government of Great Britain or that of the United States, nor asked for any compensation or remuneration for any supposed losses which had been sustained by reason of the acts of either or both of said governments.

It is said to be the interest of the republic that there should be an end of litigation. If it be the interest of the republic that litigation should cease between its citizens, it is no less so that it should cease between itself and the citizen; and if a time can ever arrive when a neglect to claim, for a period of years, can be, with propriety, urged by a government against a citizen, your committee believe this is one.

Here is a grant made by a foreign government (of which, it is true, we were subjects at the time) to one of its own subjects, imperfect, inchoate, and conditional, and depending upon the performance of the conditions in the grant mentioned for its effect. More than three-quarters of a century have elapsed, and no claim is asserted under it, of any kind, against any one. The grantee survives the date of the grant more than forty years, and never asserts any claim under it; and now, after the lapse of this very long period, the widow of one of the grand-children, or some other party in her name, comes forward, and, for the first time, makes a claim upon Congress to compensate her, and make remuneration for a loss to her husband's grandfather, which he sustained more than forty years before his death, and for which he made no claim in his lifetime.

The committee recommend the passage of the following resolution:

Resolved, That the prayer of the petitioner be not granted.

IN THE SENATE OF THE UNITED STATES.

APRIL 20, 1852.
Ordered to be printed.

Mr. HAMLIN made the following

REPORT:

The Committee on the Post Office and Post Roads, to whom was referred the "petition of Joseph Nock, praying remuneration for losses sustained in consequence of the violation of a contract for supplying the Post Office Department with locks," have had the same under consideration, and respectfully report :

That the subject of the claim appears to have been already adjudicated by the Postmaster General, and disallowed on the ground of non-performance of contract. Such being the case, and the adjudication of the Postmaster General being amply sustained by the testimony in the case, your committee think the claim should not be allowed, and therefore recommend the adoption of the accompanying resolution :

Resolved, That the prayer of Joseph Nock, "for remuneration for losses sustained in consequence of the violation of a contract for supplying the Post Office Department with locks," should not be granted.

IN THE SENATE OF THE UNITED STATES.

APRIL 20, 1852.

Ordered to be printed, and that 2,000 additional copies be printed for the use of the Senate.

Mr. SHIELDS made the following

R E P O R T :

[To accompany bill S. No. 384.]

The Committee on Military Affairs report:

That there now exists no provision of law which may afford an enlisted soldier of the army of the United States any sufficient ground to hope for advancement to any grade above that of a non-commissioned officer, no matter what may be his ability or zeal for the good of the service. The army being properly and of necessity small, and provision being made for the education of the greater number of its officers at the Military Academy, vacancies which may be filled by the appointment of non-commissioned officers or soldiers are few, and hitherto these have generally been filled by direct appointment from civil life. The reason for this, probably, is the want of some rule by which information respecting the merits of individuals in the lower grades of the army could be obtained, for reference. It seems proper that measures should be adopted which will supply this want, and that inducements be held out to such men as may be worthy of promotion to enter and continue in our military service. There is no more powerful incentive to meritorious action, to properly constituted minds, than that of advancement in their own profession. Unless some such inducement is offered; the soldiers of the American army must continue to serve as they have hitherto done, for the consideration of their pay and subsistence alone, and from a sense of duty and subordination, during the period of their enlistment. This is not as it should be, in such a country as ours; and it is not generous to men who, having the ability to elevate themselves, enter the army from an inclination to serve their country in arms. The consequences to the army are, that many who would enter and continue in it, provided they had even a remote prospect of advancement, will not enlist; or if they do, only to serve for a single enlistment. Our officers, except those from the Military Academy, must now gain their first commissions entirely through Executive favor, and the soldiers lack the encouragement of a chance for promotion. In this respect the army of the United States is as exclusive as that of any nation in the world.

The only objection which can be urged to the promotion of deserving non-commissioned officers and soldiers is, that many of them may be deficient in the education and habits which would enable them to perform the duties of their station properly, if promoted, and it cannot be denied that there is some reason in it. A man may be an excellent sergeant or corporal, have

high ambition, and yet might become a very indifferent or worthless officer. Great care and discrimination would be required in the selection of those who might be promoted directly, or the promotion might be injurious to the service to the extent of the appointment of an unfit person to office, and in the end prejudicial to the individual whom it was intended to reward. To provide against the dangers of direct promotion, as far as possible, and still to afford opportunities for the advancement of enlisted men, it is proposed to authorize the appointment of a limited number of cadets from the army, from such non-commissioned officers as may not be too much advanced in years. This would render the experiment with reference to such appointments less hazardous than direct promotion, and under any circumstances would be beneficial to the individual, by affording him the opportunity for acquiring an education fitting him for a higher position in the service, if he did not possess it before. In cases where a candidate for promotion may be too much advanced in years to enter the Military Academy with a hope of benefit, promotion, if made at all, would necessarily be direct. But such cases would be the fewer in number, and would generally occur among men who had received an education before entering the army.

Various means have hitherto been tried to secure to the army the re-enlistment of soldiers who have served one or more enlistments. Could that be effected, and the men of good character and conduct who enter the service be retained, it could not fail to be of the greatest benefit to the service, and would tend to raise the character and respectability of the numerous class of the army who compose the rank and file.

By the provisions of the act approved July 5, 1838, each non-commissioned officer or soldier who may re-enlist within two months before, or one month after the expiration of his term of service, is entitled to receive three months extra pay. In addition to this, the act approved June 17, 1850, provides that all soldiers enlisting or re-enlisting at remote posts shall be entitled to receive as a bounty the cost of subsisting and transporting a recruit from the principal depot in the east. These bounties range from \$23 to \$117 and \$142, and have failed to produce the effect for which they were intended. This was declared in the report of the general-in-chief to the Secretary of War of November 30, 1850,* and he recommended that the section of the act which made the allowance should be repealed. To afford a security against desertion, the act of July 5, 1838, and a supplement thereto, require that one dollar per month of the soldier's pay shall be retained until he is discharged. The act making appropriation for the support of the army, approved September 28, 1850, doubled the pay of enlisted men serving in Oregon and California, until March, 1852, but at the same time required that the gratuity should be withheld until the expiration of their terms of service. Each soldier upon his discharge is entitled to and receives the amount of his pay and subsistence during the time he is returning to the place of his enlistment, and the money value of such portions of his allowance of clothing as he may not have drawn during his term of service. The effect of these various provisions is to keep the soldier confined to the lowest rate of pay during his entire term of service, and at its expiration to place suddenly in his hands a comparatively large sum of money. Many soldiers when discharged return to the east to spend their money, then re-enlist and are sent back to the frontier again; thus regularly subjecting the

* See Executive Document No. 1, Senate, 31st Congress 2d session, page 115.

government to the cost of their transportation to and from their posts, and depriving it of their services from the date of re-enlistment until they join their companies, and yet drawing pay, subsistence, and clothing for that period. The high bounties offered to the soldier afford him the means of immediately increasing the amount he receives upon his discharge; and then, if he chooses, he may desert, having both means and incentives. He has no inducement to remain, for in our service no distinction is made between a veteran and a recruit. The pay is precisely the same; and although the old soldier may have the large amount received as retained pay, bounties, &c., he is in no situation to use it for his permanent benefit. The principle of existing laws to encourage re-enlistments is wrong. It is to induce a man to resume the obligations of the soldier by offering a high and immediate reward, while at the same time the reward affords the means of throwing off the obligation if he chooses to commit a crime. No permanent improvement in his condition is in his view, no matter how long he may have remained in service. As it now is, a veteran who has served faithfully for ten years, who has fought in a dozen battles, and is worth to the government as much as three raw recruits, stands upon precisely the same footing as a man who enlisted yesterday. When the two come to the pay-table they are paid the same amount, the same sum is retained as a security against desertion, and there is no recognised distinction between them whatever. This is not right, and should be corrected. It should be an object to retain the services of good men, as well as to fill the ranks; instead of offering a high and immediate reward which will tend to render a man dissatisfied with his position and duties, and afford him the means of leaving the service if he chooses to desert, the inducements held out for re-enlistment should be a regular and permanent increase of his monthly pay, somewhat proportioned to the increased value of his services to the government, and the increased respectability of his position. "Every means," says Napoleon, "should be taken to attach the soldier to his colors. This is best accomplished by showing consideration and respect to the old soldier. His pay, likewise, should increase with his length of service. It is the height of injustice to pay a veteran no more than a recruit."*

For such ends it is proposed to abolish all bounties which are now allowed by law for enlisting or re-enlisting in the service, and to increase the pay of the non-commissioned officers and soldiers two dollars per month during the period of their second enlistment, and one dollar per month in addition thereto, during the period for which they may remain in service thereafter. This will make the pay of a private soldier of artillery and infantry, who has served faithfully for ten years and over, though he may not have been so fortunate as to gain promotion, ten dollars per month. Cavalry privates would receive eleven dollars. The increased pay would not materially increase the expenses of the army; and whatever increase there may be, will only be in proportion to the success of the plan, in retaining experienced and valuable soldiers in service. If the proposed object is not secured, the plan will not only cost nothing, but be an actual saving of bounties now allowed by law. Moreover, with the present increase of money, so much greater than the proportional increase in population, labor in every civil department of life must rise in value. The pay of the soldier should rise

also, and the best and most proper way of increasing it appears to be with the length of faithful service.

It is believed that provisions such as those proposed for the promotion of deserving non-commissioned officers and soldiers, under such restrictions as will secure proper selections—the gradual and steady increase in the pay and consideration of faithful and well-tried men—together with the advantages of the military asylum now authorized by law, securing a retreat and home to soldiers in the decline of life—cannot fail to elevate the character of the enlisted men of our army, and be of the greatest benefit to the service and the country.

By the provisions of existing laws, the general commanding the army, officers commanding an army actually in the field, the commanders of geographical divisions and departments, and the commanders of permanent posts garrisoned by troops, are entitled to and receive double the number of rations allowed to their grades. The effect of this allowance is to give an officer commanding a division, or department, or garrison, who is living in quarters, or drawing the money-commutation of their quarters and fuel, from twenty-four to thirty-six, seventy-two, or ninety dollars per month more than an officer of the same grade serving in the field against an enemy, unless that officer happens to be in command of a separate army. The number of armies must always be small, and the number of departments and garrisons comparatively large. The allowance of double rations, therefore, appears to be only an inducement, so far as it goes, to officers to remain in garrison rather than to take the field, and should be abolished.

For a series of years there have been many disputes and much difficulty in the service, relative to the rights and privileges conferred by brevet rank.* Decisions have been made and reiterated upon the meaning of the sixty-first article of war; and according to the orders of President Jackson, repeated by President Polk, it gives no precedence except upon courts-martial, when such courts are composed of officers of different corps, and upon detachments composed of different corps, especially sent out from the main body of an army, to be absent for a limited time. This restricts the exercise of it, and prevents interference with the rank and command conferred and enjoined by commissions in the line of the army. But it may be feared that the provisions of law granting to officers holding commissions by brevet, when commanding a force equal in strength to the command of a similar grade in the line, the pay of such grade, open the door to abuses of some magnitude. Commands might be formed for the express purpose of giving officers holding such commissions the positions and pay of their brevet grades. As the rank has been lavishly bestowed upon officers, not only for services in the field but for services in the bureaux, the expenses of the army on this account might be increased far beyond anything contemplated by the law. To these might be added the expenses of the movement of troops to make up the commands.

It may be urged that reasons exist why officers holding commissions by brevet should be employed on command, rather than their seniors, on account of the disability of the latter. A retired list, it is believed, would at once do away with such a necessity, and with it the claim of brevet rank to anything more than the honor and distinction which it confers.

* See memorial of officers of the army, from Corpus Christi and other places, now before the Military Committee of the House of Representatives.

3 [100]

The amount drawn by officers of the army during the year ending July 1, 1851, on account of double rations, was \$36,559 85; and on account of brevet pay, above the pay to which officers were entitled by virtue of their commissions in the line of the army, was \$25,051 11. This latter amount appears, by the wording of the report, to be exclusive of the amount drawn on account of brevet pay by officers of the staff, and is therefore too small by that amount to show the sum which would be saved by the abolition of the allowance. The total of the two sums is \$61,610 96.

The greater part of this sum, for both items, is drawn by officers of the line who, with the exception of the cavalry and light artillery, receive less pay than officers of like grades of the staff; and in some respects the allowances appear to be only justice, and the allowance of an equivalent. In respect to the pay proper of officers of the army, it is believed that the present provisions of law are unequal, and that they tend to produce ill-feeling and dissension in the service. An officer of the staff, stationed in a city, drawing commutation for fuel and quarters, and forage for horses, receives a greater pay proper than an officer of similar grade in the infantry or artillery, who may be living under canvass in the field, and serving against an enemy. This is unequal, and no equivalent is provided to the greater number of officers who cannot obtain the command of posts, or may not be possessed of brevet rank. Moreover, if they could, these advantages would be contingent, and would not do away with the inequality, except in particular cases and temporarily, and the allowances are subject to the objections which have been mentioned.

In view of all these considerations, it is proposed to increase the pay proper of several grades of the army, in order to raise that of the line to that of the staff, leaving the distinction between mounted and foot officers that of the expense of their horses alone, and to abolish the allowances of double rations to commanding officers, with the exception of the general commanding the army or a separate army in the field, and all allowances of pay on account of brevet rank.

The amount of the retrenchment effected will not materially differ from the amount of the increased expenditure, and it is believed that this application of it will be more just to the officers, and beneficial to the service.

The committee also feel it to be their duty to recommend that certificates of merit be granted to non-commissioned officers, of which they have been inadvertently deprived by an oversight in past legislation, and that such a construction be placed upon the law in relation to this subject, as to carry out the original intention of the legislature.

IN THE SENATE OF THE UNITED STATES.

APRIL 21, 1852.

Ordered to be printed.

Mr. DOWNS made the following

REPORT:

[To accompany bill S. No. 890.]

The Committee on Private Land Claims, to whom was referred the resolution of the legislature of Louisiana, requesting a donation of certain lands to the Pine Grove Academy, in that State, make the following report:

In 1839, when the title to the Maison Rouge grant, in Louisiana, was in dispute between the government and claimants, though the general opinion was that their title was good, and it had been so decided by some of the State courts, and the circuit court of the United States, Messrs. Haymes, Chew, and M'Coy, claiming under the grant, made a donation of forty acres of the land in their grant to the trustees of the Pine Grove Academy, in the parish of Caldwell, for a seminary of learning; on this lot of land a large brick house and other buildings were erected, and the academy organized, and has now been in successful operation for several years, and still is so. About the same time, D. W. Coxe, one of the largest claimants of said grant, made a donation of another lot of land near to said academy, containing about four thousand acres, as more fully described in the act of donation annexed to the petition, and in the bill reported. This land is what is called Pine Hills; poor, and so broken by high hills as to be of little value. But it is in a healthy situation, and one convenient for an academy. In 1851 the supreme court of the State decided that the Maison Rouge grant was invalid, and that the land belongs to the United States. The legislature of Louisiana request that the academy may be confirmed in their title to these lands, as donated to them by the claimants under the grant. As the land is of little value, but important to the cause of education, in support of which the State has expended and is still expending large sums of money, especially as it has been long in the possession and use of the academy, which would be severely injured, or perhaps broken up, by depriving her of it at this time, the committee are of opinion that the grant ought to be made, and report a bill accordingly, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

APRIL 21, 1852.

Ordered to be printed.

Mr. FELCH made the following

REPORT:

The Committee on Public Lands, to whom were referred the proceedings of a meeting of the citizens of Marion county, Illinois, relative to pre-emption rights to certain lands, respectfully report :

That the application is for the enactment of a law, granting reasonable pre-emption rights to actual settlers along the line of the Illinois central railroad.

The annexed letter, from the Commissioner of the General Land Office, presents the facts in reference to the subject; in view of which the committee report the following resolution :

Resolved, That legislation on the subject is inexpedient.

GENERAL LAND OFFICE,
April 9, 1852.

Sir: I have the honor to return, herewith, the petition to Congress by the citizens of Marion county, Illinois, praying the passage of a law, granting "a reasonable pre-emption to actual settlers along the line of the Illinois central railroad," which was left by you a few days since, with a request for my opinion on the subject.

In reply I have to state, that I would regard the passage of such a law as detrimental to the public interests, and as in nowise conducive to the benefit of persons entitled to the aid sought to be obtained.

The land in question was reserved under the act of 20th September, 1850; and on the very day of the passage of that act, telegraphic notice was given to the land officers to withhold the land from sale. All persons who have claimed a pre-emption by reason of a settlement made prior to the reservation, have been subsequently permitted to consummate such claim by entering the land. Those who settled since the reservation did so in their own wrong, and have no right to any benefit from such illegal settlements, to the prejudice of the United States, who are entitled to the full proceeds of the enhanced value of the lands, to compensate them for the grant made for the railroad; and the President's proclamation having already issued (on the third instant) for the public sale of those odd sections within six miles of said central road, and to which the petition has reference, such a law as asked for would render necessary the suspension of such sales, to await the settlement of rights now claimed, or which might be hereafter claimed, and thus effectually defeat all the objects designed to be obtained by the competition which would otherwise exist, and to the benefit of which the public are fully entitled.

With much respect, your obedient servant,

J. BUTTERFIELD,
Commissioner.

Hon. A. FELCH,
Chairman Committee Public Lands, U. S. Senate.

IN THE SENATE OF THE UNITED STATES.

APRIL 21, 1852.
Ordered to be printed.

Mr. FELCH made the following

REPORT:

The Committee on Public Lands, to whom was referred the petition of Charles P. Colston, praying the location of certain bounty land warrants, report:

The petitioner asks Congress to cause to be located by the Commissioner of the General Land Office, seven certain bounty land warrants issued by the Pension Office, and numbered as follows; Nos. 74,531, 74,532, 74,534, 74,536, 74,537, 74,809, and 74,535, for 160 acres each.

The warrants are not presented with the petition, nor is there any evidence showing under what act of Congress they were issued, nor whether any effort has been made to locate or to obtain their location; nor is it shown that the petitioner owns or has any interest in such warrants.

Under a statement so vague as that presented, unaccompanied by proof, no action of Congress appears to be required.

If the warrants were issued under the act of February 11, 1847, for services in the war with Mexico, there is no provision of the law requiring the Commissioner to locate them. There is, however, a proviso to the 9th section of that act: "that no land warrant issued under the provisions of this act shall be laid upon any land of the United States, to which there shall be an actual settlement and cultivation." Under this proviso the instructions of the General Land Office require the party applying to locate a warrant, to file an affidavit that there was not, at the time of selection, "an actual settlement and cultivation upon any part of the said land," &c. Hence, if the General Land Office was charged with making such location, proof of such fact would be required before the location could be properly made by the Commissioner. But there is no such duty in any event imposed on the Commissioner, under the law above mentioned, and the committee see no reason for changing its provisions.

If the warrants in question were issued under the act of September 28, 1850, another question is presented. That law requires the Commissioner of the General Land Office to cause to be located any warrant which the holder may transmit to the General Land Office for that purpose, in such State and land district as said holder or warrantee may designate. This provision requires the holder, in order to entitle himself to this right, to transmit his warrant to the Commissioner, and request that the land be located under it, for him, in a designated State and land district. In the case before us, it is not even alleged that anything of the kind has been done.

It is to be presumed that all duties devolved on public officers will be faithfully performed, when any case is presented requiring their action.

The committee cannot see, from anything presented or alleged in the case, any real difficulty on the part of the holder in making an entry of the land under the warrants, and recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner be not granted.

IN THE SENATE OF THE UNITED STATES.

APRIL 21, 1852.
Ordered to be printed.

Mr. FELCH made the following

REPORT:

The Committee on Public Lands, to whom was referred the petition of James G. Bell, praying to be permitted to enter certain school lands in Louisiana, report:

That, in the opinion of the committee, the title to the lands to which the petitioner asks a pre-emption right by act of Congress is in the State of Louisiana, and consequently it is not in the power of the United States to dispose of the same. For further information as to the facts, the committee annex to this report a letter from the Commissioner of the General Land Office dated April 12, 1852. The adoption of the following resolution is recommended:

Resolved, That the prayer of the petitioner be rejected.

GENERAL LAND OFFICE, April 12, 1852.

SIR: I have the honor to return, herewith, the petition of James G. Bell to Congress, praying to be permitted to enter certain school lands in Louisiana, which accompanied your letter of the 7th instant, and in reference to which you ask for information.

It is alleged, and testimony accompanies the petition in support of such allegation, that the sectional lines of township 16, range 11 east, Monroe district, Louisiana, were never run or marked in the field by the deputy surveyor; and that, in consequence thereof, the improvements of Mr. Bell, which he designed making on his own land, (viz: the north half of section 17, the north half of section 19, and the whole of section 18, in said township, purchased by him of the register of Monroe,) turn out to be, in part, on the 16th section—his dwelling-house, negro quarters, gin, and some hundred acres of land, being thereon; and his object appears to be to obtain a special law allowing him to enter the said 16th section, or the part thereof covered by his improvements, and giving the State other land in lieu thereof for school purposes.

The surveyor general reports that township as completed; the land therein was offered in the year 1839, and various other sales besides those to Mr. Bell have been made and patented upon the plat of survey returned by the surveyor general to the district land office and to this office. The

testimony above referred to is the first intimation as to the fraudulent character of the field-notes returned by the deputy surveyor.

As, however, the 16th section belongs to the State for schools, it is not seen how the object of Mr. Bell can be attained without her consent; and, as she is authorized by law to sell her school land, such consent might as well be evinced by a direct sale to Mr. Bell as through the circuitous course of the legislation necessary by the other mode, unless it is designed to give the State other land *equivalent in value* to that which she would thus surrender, it being presumed that her consent would not be given without some such arrangement.

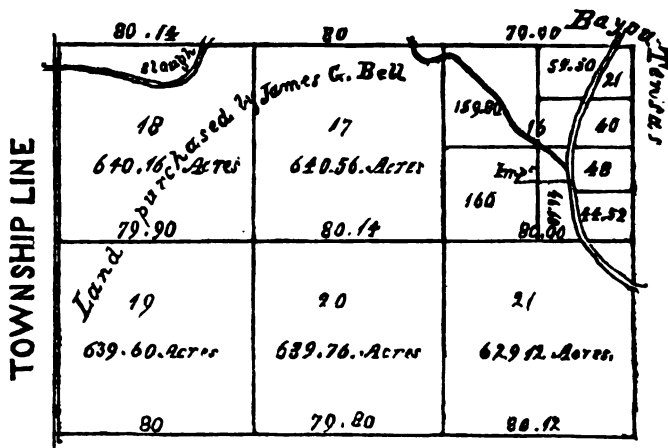
From the situation of the land purchased by Mr. Bell, this office cannot see how, with a proper sense of caution, he made his improvements on section 16, believing them to be on the land purchased, even upon the supposition that the *sectional* corners did not exist in the field. He made the purchase at the land office by virtue of a plat there filed, and no doubt consulted by him to ascertain the quantity for which payment was to be made. The township corners, exhibited by marks in the field, would have given him the starting point for his purchase on the west; and, by proceeding on an east line *no further* than the length of 80.14 chains for the northern boundary of section 18, and 80 chains for the like boundary of section 17, he would have failed to reach any part of section 16.

With much respect, your obedient servant,

J. BUTTERFIELD,
Commissioner.

Hon. A. FELCH,
Chairman Committee Public Lands, Senate U. S.

Part of township 16, range 11 east, Monroe district, Louisiana.



IN THE SENATE OF THE UNITED STATES.

APRIL 22, 1852.

Ordered to be printed.

Mr. BRODHEAD made the following

REPORT:

[To accompany bill S. No. 394.]

The Committee of Claims, to whom was referred the petition of Jacob Gideon, report:

On the 15th July, 1842, the petitioner entered into a contract with the Board of Navy Commissioners to supply them with the blank-books, blanks, &c., for the use of that branch of the Navy Department for the ensuing year. On the 31st August following, the act abolishing the "Board of Navy Commissioners" was passed. On the 5th September, Mr. Gideon was informed by Commodore Warrington, "that the change of the board into bureaux would make no alteration or change in his engagement for books, &c.," and on the same day an order was given for a quantity of blank books, for the Bureau of Ordnance and Hydrography. On the 10th of September Mr. Gideon was informed, that the Secretary of the Navy had decided that his contract was "abrogated by the law abolishing the board."

On the same day he addressed a communication to the Secretary, stating that he was then engaged in the execution of sundry orders under his contract, and unless allowed to complete the work, he should be subjected to heavy losses. To this appeal (as he states) he received no answer until the 8th November, when he received a note from the Secretary adhering to his previous decision.

Under these circumstances, the petitioner claims that, as he had made a good and valid contract with the authorized agent of the government, and had, at considerable cost, made arrangements to fulfil the same, and was at all times prepared to do so, and while proceeding in good faith in its execution it was abrogated by the agent of the government, without any default on the part of the contractor, he is not only entitled to be remunerated for the damages he suffered, but to be paid the amount of profits he would have realized by the fulfilment of the contract. He lays his damages at \$2,000.

The committee do not recognise the right of a public contractor to prospective profits on an unexecuted contract, and therefore they are not prepared to sanction an allowance in the nature of damages, beyond the loss actually incurred by the contractor by reason of his having entered into the contract. To this extent the committee think the claimant entitled to relief, and report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

APRIL 22, 1852.Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT :

[To accompany bill S. No. 895.]

The Committee on Pensions, to whom were referred certain documents relative to the claim of Emilie Hooe to a pension, report :

That during the second session of the 31st Congress, the Committee on Pensions made a favorable report in the case to which said documents refer, accompanied by a bill for the relief of said Emilie Hooe, which report the committee now approve and adopt, and recommend the passage of the accompanying bill.

IN SENATE—January 31, 1851.

The Committee on Pensions, who, by the resolution of the Senate of August 26, 1850, were "instructed to examine and report on the propriety of allowing a pension to Emilie Hooe," widow of Brevet Major Alexander Seymour Hooe, beg leave to report :

That said Alexander S. Hooe lost his right arm in the battle of Resaca de la Palma, at which time he was a captain. A letter from Adjutant General R. Jones, dated August 16, 1850, says: "He was brevetted major, to date from May 9, 1846, 'for gallant and distinguished services in the battles of Palo Alto and Resaca de la Palma, in Texas, on the 8th and 9th of May, 1846.'"

The committee are fully satisfied, from the facts made known to them, that Major Hooe's death was caused by the aforesaid wound, by producing a gradual depression of spirits, which terminated in complete alienation of mind; in which state, while alone in his quarters at Baton Rouge barracks, where he was then in command, he burnt his body in several places, and in so shocking a manner that he died on the 9th of December, 1847, ten days after the occurrence; leaving his widow and three young children in destitute circumstances. In view of these facts, the committee report a bill for her relief.

IN THE SENATE OF THE UNITED STATES.

APRIL 22, 1852.
Ordered to be printed.

Mr. BRODHEAD made the following

R E P O R T :

The Committee of Claims, to whom was referred the memorial of Hezekiah Miller, report:

The memorialist represents that, in 1828, he was a clerk in the Bureau of Indian Affairs, at a salary of \$1,000 per annum. At that time a clerk who had been receiving \$1,400 per annum resigned, and on application to the Secretary of War, the vacant salary was assigned to the memorialist; but for some reason, which does not appear, he did not receive the additional salary until 1833, when it appears to have been duly assigned to him, and which he has received ever since.

He now asks that Congress will authorize the payment of the difference between the amount actually paid him, and the amount he would have received, had the increased salary been allowed him from the period of the resignation of Mr. Fenner, in 1828, up to the time when he obtained it in 1833, amounting to \$1,358 44, with interest from 1st January, 1833.

It does not appear that any claim was made for the additional salary at the time, or that any dissatisfaction was expressed with the amount received. It would be strange if a considerable portion of an employee's salary, to which he was clearly entitled, and for which the money was duly appropriated, should be withheld by the head of the department for a series of years without complaint or remonstrance; and still more, that no demand should be made for its payment until the lapse of twenty years. Besides, in this case there is no evidence, other than the allegation of the memorialist, that the Secretary ordered the promotion; and it is not to be presumed, if he had done so, that he would have withheld the compensation ordered by himself.

Colonel McKenney, then at the head of the bureau, in a letter dated 27th February, 1850, in answer to inquiries of the memorialist, says, "I believe both these (the time and amount) to be as you state them;" but he appeals to the records as the proper authority, and it is not alleged that the records of the department show any such facts. It is proper, however, to remark, that the present Commissioner of Indian Affairs states, that he learns that the representations of the memorialist in regard to his appointment, the amount of pay which he was entitled to receive, and the amount which he did actually receive, are correct. But the Commissioner does not give the grounds upon which his opinion is based, unless it be that "the memorialist is incapable of asserting a claim which he does not believe to be just." The committee have no disposition to question the entire respectability of

the petitioner ; but they are of opinion, that after a lapse of twenty years, without the assignment of any reason why the payment was not sooner demanded, Congress should require the most satisfactory evidence before interposing special legislation.

It is well known that clerks in the departments are often assigned to higher grades of duty, in anticipation of the assignment of the salary usually attached to such duty. This is usually very satisfactory to the clerk, as it compliments his capacity or industry, and is an indication that the salary will follow at a proper time, provided his ability shall prove adequate to the duty. And this advantage seems to have been realized by the memorialist, who shortly after received the increased salary, which he has continued to enjoy.

The committee recommend the adoption of the following resolution :

Resolved, That the memorialist is not entitled to relief.

IN THE SENATE OF THE UNITED STATES.

APRIL 22, 1852.
Ordered to be printed.

Mr. FELCH made the following

R E P O R T :

The Committee on Public Lands, to whom was referred the petition of Jane Kearney, praying a pension or bounty land, report as follows:

The petitioner alleges that her husband and two sons were for some years engaged in the service of the United States, as privates in the army, and that she herself, in company with them, performed meritorious services in the hospital. Her claim for bounty land is founded, however, on the services of one of her sons, who died while in the army. From an official certificate attached to the petition, it appears that this son enlisted as a private for three years, July 6, 1837, at New York, and died at Madison barracks in that place, October 21, 1839. It does not appear that he was engaged in any service other than the ordinary duties in garrison. For services of this character, bounty land have never been allowed by any act of Congress to the soldier or his representative, and no reason is perceived for adopting a rule at the present time broad enough to embrace the case now presented.

The committee report the following resolution :

Resolved, that the prayer of the petitioner for bounty land be not granted.

IN THE SENATE OF THE UNITED STATES.

APRIL 26, 1852.

Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT:

[To accompany bill S. No. 397.]

The Committee on Pensions, to whom was referred the petition of Rosanna Sowards, report :

That the petitioner is the mother of Griffin Sowards, deceased, who enlisted to serve twelve months in the first regiment of Ohio volunteers, company D, who was wounded in the battle of Monterey, and was, in consequence of said wound, discharged for disability ; and who died at Brazos island on the 5th of December, 1846, while endeavoring to reach his home in Ohio. From testimony quite satisfactory to the committee, it appears that the said Griffin Sowards was but seventeen years old at the time he enlisted ; at which time his mother, who was a widow, and in destitute circumstances, depended much on his labor to aid her in supporting several young children, left to her sole care on the death of her husband. He was her eldest child ; and when she found he had marched with the volunteers she followed them for some distance, for the purpose of getting him to return home ; but in this she was frustrated by sickness, which prevented her from overtaking the company in which her son was mustered.

In view of the facts presented, the committee have deemed it expedient to grant relief to the petitioner, believing that she was legally and justly entitled to the services of her son, being a minor at the time she was deprived of them by the recruiting officer ; and they therefore report a bill, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

APRIL 28, 1852.
Ordered to be printed.

Mr. UNDERWOOD made the following

REPORT:

[To accompany bill S. No. 401.]

The Committee on Public Lands, to whom was referred the petition of Cadwallader Wallace, have had the same under consideration, and beg leave to report a bill for his relief.

To enable the Senate to understand the petitioner's claim to relief, the committee submit the following brief statement of facts:

Virginia, prior to her cession to the United States of the counties northwest of the Ohio river, had promised certain land bounties to her troops on a continental establishment, and had set apart a district of country within the limits of the present State of Kentucky for their satisfaction. At the time of the cession a doubt was entertained, whether the country appropriated for that object contained good lands enough to satisfy these bounties. To make provision for any deficiency that might subsequently be found to exist, a clause was inserted into the deed of cession reserving the country between the rivers Scioto and Little Miami, in the present State of Ohio, for such bounties as could not be satisfied in Kentucky. The reservation reads in these words: "That in case the quantity of *good land* on the southeast side of the Ohio, upon the waters of the Cumberland river, and between the Green river and Tennessee, which has been reserved by law for the Virginia troops on continental establishment, should, from the North Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency shall be made up to said troops *in good lands*, to be laid off between the rivers Scioto and Little Miami, on the northwest side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia."

This is a reservation in trust for a contingent object, and it is plain from a bare reading of the clause, that if it should thereafter be found that there was enough good land in the Kentucky military district to satisfy all the bounties, the whole reservation in Ohio would belong to the United States, and fall into the common mass of public land. If there was not enough in Kentucky, but the deficiency should prove less in quantity than the amount of *good land* reserved in Ohio, then the surplus land, and that only, would belong to the United States, and fall into the common mass. But if the deficiency should be found equal to, or greater than the whole quantity of *good land* in the reservation, then the entire territory reserved would belong to the bounty land claimants, and could not be taken from them for

the use of the United States or appropriated to any other object, without a plain breach of trust. It is a fact now established past controversy, that the deficiency exceeds all the good lands in the reservation.

The country lying west of the military reservation was ceded absolutely to the United States. Congress took early measures to survey and sell the lands west of the reservation. To do this, it was necessary to run the boundary line between the reservation and the government lands west of it. A United States surveyor, by the name of Ludlow, was sent out to run this line. Beginning at the source of the Little Miami, one terminus of the boundary, he ran a line towards what he supposed to be the source of the Scioto, the other terminus. A part of the country between the sources of these rivers then belonged to the Indians, and when he arrived at their territory they arrested his further progress, and the running of the line was never completed. This line is called Ludlow's line. The United States surveys extended to this line, and the land west of it was afterwards sold at the Cincinnati land office as public land. The State of Virginia questioned the correctness of this line, and claimed that its bearing was too far east, and thus interfered with the military reservation. Subsequently, commissioners were sent out by Virginia and the United States to run this line. They explored the Little Miami and found its source to be at the point where Ludlow began his line. They then explored the Scioto and found its source; when, under their direction, a surveyor by the name of Roberts ran a line from the source of one river to the source of the other. This is called Roberts's line. Beginning at the same point with Ludlow's line, it runs west of it, leaving a narrow strip or gore of land between the two lines. The Virginia military claimants entered their warrants on the land between them, and as far west as Roberts's line. This brought about a conflict between the military claimants and those who had purchased of the United States. The question of boundary was brought by these conflicting claimants into the Supreme Court of the United States, which decided that Roberts's line was the true western boundary of the military reservation, and that, consequently, it embraced all the lands between the two lines. This decision was had in the case of *Doddridge's Lessee vs. Thompson and Wright*; and that boundary was again confirmed by the same court, in the subsequent case of *Reynolds vs. McArthur*. The United States then paid the military claimants for the lands on which they had before that time laid their warrants, between the two lines, on their conveying their title to the United States, and thus the purchasers of the government were quieted in their possessions. Since then other military warrants have been laid by Cadwallader Wallace, on the residue of the lands between these lines. The proof is conclusive, that at the time he laid his warrants on those lands there were no other good lands in the military reservations out of which he could satisfy them, all the good lands having been previously appropriated by other claimants of land bounties.

These facts demonstrate that by reason of the error in Ludlow's line, the United States have sold lands which did not belong to the government, and which cannot be withheld from the military claimants without a plain breach of trust. The bill directs the President to pay over to Wallace the money received by the United States from the sale of the lands on which he laid his warrants, on his conveying his title to the United States, which will quiet the government purchasers in their possessions.

It is clear the government ought to yield up the money or the lands to the military claimants. The latter would be an act of great hardship and injustice to the purchasers of the government, who are entitled to look to their vendor for protection. In the cases heretofore compensated—for the military claimants were paid the value of their lands, exclusive of improvements—Wallace asks that the same rule may be extended to him; but as that would probably amount to a much larger sum than the money received by the government from their sale, the latter has been adopted as the rule of compensation in this case.

IN THE SENATE OF THE UNITED STATES.

April 30, 1852.

Ordered to be printed.

Mr. GWIN made the following

REPORT:

The Committee on Naval Affairs, to whom was referred the petition of Hugh Wallace Wormley, formerly an officer of the navy, praying a pension, have had the same under consideration, and report :

That said petition was originally presented to Congress in 1840, and appears to have been referred and considered at several subsequent sessions, and adverse reports made, thereon. The objections heretofore urged are, in the opinion of the committee, conclusive. The facts in the case are clearly stated in the subjoined reports from the Committee on Naval Affairs of the Senate of the 27th and 28th Congresses, and no new evidence is furnished at the present time. The committee, therefore, are constrained to report against the prayer of the petitioner.

IN SENATE—April 26, 1842.

Mr. WILLIAMS submitted the following report :

The Committee on Naval Affairs, to whom was referred House bill No. 192, granting a pension of two hundred and twenty-five dollars per annum during life, to Hugh Wallace Wormley, have had the same under consideration, and report :

That the same ought not to pass. The claim of Mr. Wormley to a pension is not supported by any testimony, and rests entirely upon his own statement and certificates that he is an honorable and worthy man.

The case, as stated by the petitioner, is, that he was a midshipman in the navy, and in March, 1801, was attached to the Maryland, commanded by Captain Rogers, and sailed from Baltimore to Havre de Grace, in France. That the passage was boisterous, and nearly every day wind and cold. That they had but two watches, four hours on and four hours off, alternately, and this severe duty brought on a violent cold through his system, and finally terminated in his head, and fell in his eyes, so that he was under charge of the surgeons till his return to Baltimore, and was then under

the charge of a distinguished oculist for six months, and the result is that he has lost entirely the sight of his left eye, and the sight of the other was impaired.

In August, 1801, Wormley was discharged under the peace establishment. In March, 1803, he was reinstated as midshipman, and ordered to join the Chesapeake. In May, 1803, he was ordered to the frigate Philadelphia, and was taken prisoner by the Tripolitans in October, 1803, and liberated in June, 1805, and returned September, 1805, and on the 19th September, 1805, he was appointed second lieutenant of the marine corps, and resigned in May, 1806. His application to Congress for a pension was made in 1840.

Considering the great lapse of time which has occurred since the alleged cause of disability, and that the petitioner was reinstated as midshipman in 1802, and served in that capacity until 1805, and was then appointed second lieutenant of marines, it would require very strong evidence to convince the committee that the present disability was the result of injury received in 1801.

The only fact proved in the case is, that after his return from Havre de Grace he was placed by his father under the care of a distinguished oculist in Baltimore, where he remained six months, and soon after he was reinstated in the service. The committee cannot think that a pension should be granted under the proof and circumstances of the case.

IN SENATE—May 28, 1844.

Mr. BAYARD made the following report:

The Committee on Naval Affairs, to whom was referred House bill No. 76, for the relief of Hugh Wallace Wormley, report:

That a bill for the relief of the same individual having been passed by the House of Representatives in the year 1842, was referred to the Committee on Naval Affairs in the Senate, who reported against the claim of the petitioner, and the bill was accordingly indefinitely postponed. (Senate Doc. No. 269, 27th Cong., 2d sess.; Senate Journal 27th Cong., 2d sess., page 479.)

In addition to the facts stated in the report referred to, and the reflections to which they gave rise, the committee will remark that it appears, from a letter of the honorable Mr. Upshur, then Secretary of the Navy, dated November 14, 1842, and addressed to the petitioner, that the petitioner was ordered, on the 14th of April, 1802, to join the frigate Constitution at Boston, as soon as the restoration of his health would permit; that on the 30th of April, 1802, permission was given to him to remain on furlough until his health was restored, and then to report to the department; and that on the 9th of February, 1803, he was directed to hold himself in readiness for sea service, and on the 24th of May, 1803, was ordered to join the frigate Philadelphia; which he did, and went in her on duty to the Mediterranean. He was subsequently, as is stated in the report, appointed a second lieutenant of marines, on the 19th of September, 1805, and resigned his com-

mission on the 20th May, 1806. The inference to be fairly drawn from these facts is, that he must have reported himself as fit for duty, and could not have been considered as an invalid. The committee therefore recommend that the bill be indefinitely postponed, and report a resolution to that effect.

Resolved, That House bill, No. 76, for the relief of Hugh Wallace Wormley, be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

APRIL 30, 1852.

Ordered to be printed.

Mr. GWIN made the following

REPORT:

The Committee on Naval Affairs, to whom was referred the petition of John S. Van Dyke, praying payment of the prize money due his brother, Henry Van Dyke, an officer of the navy, deceased, have had the same under consideration, and report:

That this petition was before Congress in 1850, and an adverse report from the Committee on Naval Affairs made thereon, in which the facts in the case are stated. The report is as follows:

IN SENATE—February 25, 1850.

The Committee on Naval Affairs, to whom was referred the petition of John S. Van Dyke, report:

That the petitioner, John S. Van Dyke, of Philadelphia, represents himself to be the legal representative of Henry Van Dyke, formerly a midshipman in the United States navy, and alleges that Henry Van Dyke was entitled to a share in the prize money of the *Insurgent*, a French frigate captured by the *Constellation* in 1799, and of two schooners, the *Retaliation* and *Levant*, also captured by the *Constellation*; that the said Midshipman Van Dyke, gave to his mother, Charlotte Van Dyke, of Philadelphia, a power of attorney to receive his share in the said prizes, but that it was never paid to her. He asks that the amount be paid to him.

It appears, by letters from the Fourth Auditor of the Treasury, dated respectively April 24, 1841, April 30, 1841, and May 12, 1841—all of them addressed to the petitioner, John S. Van Dyke—that the prize money, eighty-four thousand five hundred dollars, appropriated by Congress for the purchase of the *Insurgente*, was paid over to Charles Biddle, esq., of Philadelphia, the prize agent of the captors, who was not required to render any account to the office of the "Accountant of the Navy," or to that of the Fourth Auditor, showing the payments made by him in the distribution of said prize money among the officers and crew of the *Constellation*. There is not, therefore, on the files of any department of the government, any evidence that Midshipman Van Dyke, by himself or assignee, did not receive his due share of prize money. The petitioner offers no proof what-

ever that Mr. Biddle was not the authorized agent of the officers and crew of the Constellation, (Midshipman Van Dyke among the rest,) nor any proof that Mr. Biddle failed to pay over the share due to Midshipman Van Dyke, in person or to his assignee. In the absence of any contrary evidence, the committee take for granted that the Navy Department was put in possession of sufficient evidence of Mr. Biddle's being the regularly constituted agent of the captors.

In relation to the other captures alleged in the petition, the Fourth Auditor states there is no information in his office; and the petitioner offers no such information from other sources as can be made the basis of action by Congress.

The committee recommend the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

The objections made to the claim in the foregoing report still exist, as no evidence has yet been furnished that the prize money was not duly paid over to Midshipman Van Dyke, the original claimant, by Mr. Biddle, the prize agent of the captors; neither is it shown that Mr. Biddle was not the authorized agent of Midshipman Van Dyke, in common with the other officers and crew of the Constellation. The laws relating to the distribution of the proceeds of sales of prize vessels, direct that the share of such prizes belonging to the captors shall be paid over to the parties entitled, or to their authorized agent or agents. It is not likely that any prize money would have been paid over to *an agent*, unless it was shown that he was duly authorized by the captors to receive it.

The committee therefore concur in the opinion expressed by Mr. Yulee in his report upon this case, and report adversely thereon.

IN THE SENATE OF THE UNITED STATES.

APRIL 30, 1852.

Ordered to be printed.

Mr. BRODHEAD made the following

REPORT:

[To accompany bill S. No. 406.]

The Committee of Claims, to whom was referred the memorial of Combs Greenwell, report :

The memorialist alleges, that while he was in the employment of the United States, as a machinist at the Washington navy-yard, he was injured by a fall from the United States steamer "Union," by which he was rendered unable to labor, and was under the charge of a physician for seventy days, during which period his pay was stopped, "contrary to the usage of the department in similar cases."

The fact of the injury and consequent disability, are certified to by Mr. Ellis, the chief engineer and machinist of the yard. He asks that his *per diem* of \$1 68, amounting to \$117 60 may be allowed him.

Under the circumstances the committee are of opinion that relief should be granted, and therefore report a bill.

IN THE SENATE OF THE UNITED STATES.

MAY 3, 1852.

Ordered to be printed.

Mr. DOWNS made the following

REPORT:

[To accompany bill S. No. 406.]

The Judiciary Committee, to whom was referred the petition of the county judge of Des Moines county, Iowa, asking relief for that county, report:

That so far as the said petition asks a contribution on the part of the United States, to aid in the erection of buildings for the joint use of the federal and State courts, and so far as the said petition asks remuneration for a quarter section of land, to which the said county had a right of pre-emption, and which, by the act of Congress of July 2, 1836, was disposed of in a different manner; these matters have both been made the subjects of separate bills, which have been referred to appropriate committees in this body, and need not, therefore, to receive the further attention of this committee.

In regard to the claim for money paid by the said county for the use of the United States, it appears from the evidence on file, that from the first organization of the territory of Wisconsin, in 1836, up to the close of the year 1843, all the expenses of the United States territorial district court, held in that county, were paid from the county treasury; excepting those which accrued during the first six days of each term. This grew out of the construction placed upon the act of Congress organizing the territory, by the federal officers appointed under that act. The act declared that a preference should be given to cases in which the United States were a party, over all other cases, during the first six days of each term. It was thence inferred that the United States were to pay none of the court expenses after the end of those six days.

Your committee think this an erroneous construction of that act. It was doubtless the intention of Congress, that during the territorial existence of Iowa all the expenses of its district courts should be paid by the United States, in the same manner as is now done with regard to the courts in the District of Columbia. In 1843 the question was referred by the marshal of Iowa, to the First Comptroller of the Treasury. In his instructions dated December 19, 1843, he directs the marshal to pay off all the expenses of the district court during the entire term; which, from that time forth, was accordingly done.

Your committee are of the opinion that the foregoing state of facts clearly entitle the county of Des Moines to a reimbursement of the amount of money so paid by it, and they report the accompanying bill accordingly.

All which is respectfully submitted.

